



# SOUTH CAROLINA BUDGET AND CONTROL BOARD

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
150260016A	05/10/2015	05/10/2016		BUILDING AND PERSONAL PROPERTY	04 MAY 2015

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-27

NAMED INSURED AND ADDRESS	CONTACT PERSON AND PHONE	FORM #	PAGE
HORRY COUNTY SCHOOL DISTRICT PO BOX 260005 CONWAY, SC 29528-6005	DARLYN ADAMS (843)488-6942		20 OF 73
	TYPE OF ACTIVITY		ACTIVITY #
	*** RENEWAL DECLARATION ***		001

1 OF 34

EFFECTIVE 12:01 AM STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

## COVERED CAUSES OF LOSS:

SPECIAL FORM EARTHQUAKE FORM FLOOD INSURANCE

## BOILER AND MACHINERY COVERAGE FORM:

IN RETURN FOR THE PAYMENT OF PREMIUM AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY WHILE THE OBJECT IS IN USE OR CONNECTED READY FOR USE AT ANY LOCATION.

LIMIT OF INSURANCE ..... \$5,000,000 PER ACCIDENT

PREMIUM ..... INCLUDED

FORMS APPLICABLE TO BOILER AND MACHINERY COVERAGE: PD-01, PD-09, PD-12

## ORDINANCE AND LAW:

LIMIT OF INSURANCE ..... \$100,000

## OPTIONAL COVERAGES APPLICABLE ONLY WHEN ENTRIES ARE IN THE BRACKETS BELOW:

REPLACEMENT COST BUILDINGS ..... (X)

REPLACEMENT COST PERSONAL PROPERTY ... (X)

## DEDUCTIBLES:

COVERED LOSS ..... \$1,000

EARTHQUAKE: SPECIAL 5% DEDUCTIBLE. THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR EARTHQUAKE LOSSES.

COINSURANCE ..... 80%

SEGMENT NUMBER	PROPERTY DESCRIPTION/LOCATION		LIMIT OF INSURANCE	RATE	PREMIUM
✓20	MAINTENANCE WAREHOUSE	BLDG	10,000	0.180	18.00
	WOOD POLE W/ANTENNA (100 FT)	CONT	0	0.217	.00
✓30	MAINTENANCE WAREHOUSE	BLDG	12,000	0.115	13.80
	FUEL PUMP	CONT	0	0.076	.00
✓40	MAINTENANCE WAREHOUSE	BLDG	3,000	0.115	3.45
	32 FUEL PUMP CANOPY	CONT	0	0.076	.00
✓60	MAINTENANCE WAREHOUSE	BLDG	8,000	0.537	42.96
	TRANSFORMER BLDG.	CONT	5,000	0.537	26.85
✓80	MAINTENANCE WAREHOUSE	BLDG	778,851	0.242	1,884.82
	BUILDING A	CONT	143,800	0.326	468.79



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation and Non-Renewal

1. The first Named Insured shown in the Declaration may cancel this policy by mailing to the Insurance Reserve Fund a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the Insurance Reserve Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
2. The Insurance Reserve Fund may cancel this policy for nonpayment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
3. If this policy is cancelled in accordance with (1) or (2) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. For the purposes of this policy, the term non-renewal shall mean cancellation if the insured is ceasing all coverages with the Insurance Reserve Fund and conditions as provided in sections (1), (2) and (3) apply.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Name Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections and Surveys

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.

### E. Premiums

The first named insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

INSURANCE RESERVE FUND

By

Director



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
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Phone: (803) 737-0020

### BOILER AND MACHINERY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the word "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. - DEFINITIONS.

#### A. COVERAGE

We will pay for direct damage to Covered Property caused by a Covered Cause of Loss.

##### 1. Covered Property

Covered Property, as used in this Coverage Part, means any property that:

- You own; or
- Is in your care, custody or control and for which you are legally liable.

##### 2. Property Not Covered

Covered Property does not include any:

- Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- Data stored on this media; or
- Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

##### 3. Covered Cause of Loss

A Covered Cause of Loss is an "accident" to an "object" shown in the Declarations. An "object" must be in use or connected ready for use at the location specified for it at the time of the "accident".

##### 4. Defense

- If there is damage to property of another in your care, custody or control and for which you are legally liable, that was directly caused by an "accident" to an "object," we will have the right and duty to defend you against any "suit" alleging liability for damage to that property. However, we have no duty to defend you against any "suit" alleging liability for damage to property not covered by this Coverage Form.
- If a claim or "suit" is brought against you alleging that you are liable for damage to property of another that was caused by an "accident" to an "object", we will either:

- Settle the claim or "suit"; or
- Defend you against the "suit" but keep for ourselves the right to settle it at any point.

#### 5. Coverage Extensions

##### a. Expediting Expenses

With respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- Make temporary repairs;
- Expedite permanent repairs; and
- Expedite permanent replacement.

We restrict the amount payable for Expediting Expenses as explained in the Limits of Insurance section of this Coverage Form.

##### b. Automatic Coverage For A Newly Acquired Location

We will automatically cover an "accident" to an "object" at a newly acquired location. This automatic coverage begins at the time you acquire the property and continues for 90 days, under the following conditions:

- You must inform us, in writing, of the newly acquired location within 90 days of the date you acquire it;
- The "object" must be in use or connected ready for use at the time of acquisition and throughout the period of automatic coverage and be of a type that would be included in any "Object" Group Description shown in the Declarations;
- The Limit of Insurance and Deductible amount will be the highest amounts shown in the Declarations for the same type of "object"
- We will not be liable under this coverage for Consequential Damage, Business Interruption, or any other indirect loss resulting from an "accident" to an "object"; and
- You agree to pay an additional premium as determined by us.

##### c. Supplementary Payments

We will pay, with respect to any claim or any "suit" we defend:

- All expenses we incur;
- The cost of bonds to release attachments, but only for bond amounts within in the Limit of Insurance. We do not have to furnish these bonds;

- (3) All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of the time off from work;
- (4) All costs taxed against you in any "suit" we defend;
- (5) Pre-judgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer; and
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the Limit of Insurance shown in the Declarations.

These payments will not reduce the Limit of Insurance.

## B. EXCLUSIONS

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

### 1. Ordinance or Law

Any increase in loss caused by or resulting from the enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration use, operation, construction or installation. As used here, increase in loss also includes expenses incurred beyond those for which we would have paid if no "hazardous substance" had been involved in the "accident".

### 2. Earth Movement

Any earth movement, including but not limited to earthquake, landslide, mudslide, subsidence or volcanic eruption.

### 3. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

### 4. War and Military Action

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

5. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.

6. Lack of power, light, heat, steam or refrigeration.

7. An explosion. However, we will pay for direct loss or damage caused by an explosion of an "object" of a kind specified in a. through g. below, if covered

by this insurance and described on an Object Definitions endorsement that is a part of this policy, and is not otherwise excluded in this Section B.:

- a. Steam boiler;
- b. Electric steam generator;
- c. Steam piping;
- d. Steam turbine;
- e. Steam engine;
- f. Gas turbine; or
- g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.

8. Fire or explosion that occurs at the same time as an "accident" or that ensues from an "accident". With respect to any electrical equipment forming a part of an "object", this exclusion is changed to read:

Fire or explosion outside the "object" that occurs at the same time as an "accident" or ensues from an "accident".

9. The explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere, whether or not the explosion is:

- a. Contributed to or aggravated by an "accident" to any part of an "object" that contains steam or water; or
- b. Caused in whole or in part by an "accident" to an "object" or part of an "object".

10. An "accident" that is the result of an explosion or fire.

11. An "accident" to any "object" while being tested.

12. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.

13. An "accident" to:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- b. Data stored on this media; or
- c. Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".



14. An "accident" that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have:

- a. Aircraft or Vehicles;
- b. Lightning;
- c. Sinkhole Collapse;
- d. Smoke;
- e. Sprinkler Leakage; or
- f. Weight or Snow, Ice, or Sleet.

15. An "accident" that is caused by either of the following causes of loss:

- a. Windstorm or Hail; or
- b. Freezing, caused by cold weather.

16. A delay in, or an interruption of, any business, manufacturing or processing activity.

17. Any other indirect result of an "accident" to an "object".

#### C. LIMITS OF INSURANCE

- 1. We will not pay more than the applicable Limit of Insurance shown in the Declarations for all direct damage to Covered Property that results from any "one accident".
- 2. The following coverage limitations to our payment for direct damage to Covered Property are part of and not in addition to the Limit of Insurance for this Coverage Form.

##### a. Expediting Expenses

Our payment for Expediting Expenses will be limited to:

- (1) \$25,000; or
- (2) What is left of the Limit of Insurance after we pay your loss for Covered Property damaged by an "accident";

whichever is less.

##### b. Hazardous Substance Limitation

The following applies despite the operation of the Ordinance or Law Exclusion. This limitation does not apply to damage, contamination or pollution caused by ammonia.

If Covered Property is damaged, contaminated or polluted by a "hazardous substance" as a result of an "accident" to an "object", the most we will pay for any additional expenses incurred by you for clean up, repair or replacement or disposal of that property is \$25,000. As used here, additional expenses mean expenses incurred beyond those for which we would be liable if no "hazardous substance" had been involved.

##### c. Ammonia Contamination Limitation

If Covered Property is contaminated by ammonia as a result of an "accident" to an "object", the most we will pay for this kind of damage, including salvage expense, is \$25,000.

#### d. Water Damage Limitation

If Covered Property is damaged by water as a result of an "accident" to a covered refrigerating or air conditioning vessels and piping, the most we will pay for this kind of damage, including salvage expense, is \$25,000.

Any payment made under Section C will not increase if more than one insured is shown in the Declarations.

#### D. DEDUCTIBLE

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. If more than one "object" is involved in "one accident", only the highest Deductible will apply.

#### E. BOILER AND MACHINERY CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Loss Conditions

###### a. Abandonment

There can be no abandonment of any property to us.

###### b. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal we will still retain our right to deny the claim.

##### c. Duties In the Event of Loss or Damage

- (1) You must see that the following are done in the event of loss or damage:
  - (a) Give us a prompt notice of the loss or damage. Include a description of the property involved.
  - (b) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (c) Allow us a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage.

(d) Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.

(e) If requested, permit us to question you under oath, at such times as may be reasonably required about any matter relating to this insurance on your claim, including your books and records. In such event, your answers must be signed.

(f) Send us a signed, sworn statement of loss containing the information we request to settle the claim. You must do this within 60 days after our request.

(g) Cooperate with us in the investigation or settlement of the claim.

(2) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**d. Insurance Under Two or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage subject to the Limit of Insurance.

**e. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Part unless:

(1) There has been full compliance with all the terms of this Coverage Part; and

(2) The action is brought within 2 years after the date of the "accident"; or

(3) We agree in writing you have an obligation to pay for damage to Covered Property of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this policy to bring us into an action to determine your liability.

**f. Loss Payable Clause**

(1) We will pay you and the loss payee shown in the Declarations for loss due to an "accident" to an "object", as interests may appear. The insurance covers the interests of the loss payee unless the results from conversion, secretion or embezzlement on your part.

(2) We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest.

(3) If we make any payment to the loss payee, we will obtain their rights against any other property.

**g. Other Insurance**

(1) You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.

(2) If there is other insurance covering the same loss or damage, other than that described in (1) above, we will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not.

In no case will we pay more than the applicable Limit of Insurance.

**h. Privilege to Adjust With Owner**

In the event of loss or damage involving property of others in your care, custody or control, we have the right to settle the loss or damage with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.

**i. Transfer of Rights of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them.

**j. Valuation**

(1) We will pay you the amount you spend to repair or replace your property directly damaged by an "accident". Our payment will be the smallest of:

(a) The Limit of Insurance;

(b) The cost at the time of the "accident" to repair the damaged property with property of like kind, capacity, size and quality;

(c) The cost at the time of the "accident" to replace the damaged property on the same site with other property:

(i) Of like kind, capacity, size and quality; and

(ii) Used for the same purpose;

(d) The amount you actually spend that is necessary to repair or replace the damaged property.

(2) As respects any "object", if the cost of repairing or replacing only a part of the "object" is greater than:

(a) The cost of repairing the "object"; or

- (b) The cost of replacing the entire "object" on the same site;

we will pay only the smaller of (a) or (b).

The repair parts or replacement "object" must be

- (c) Of like kind, capacity, size and quality; and

- (d) Used for the same purpose.

The cost of repair or replacement in (1) and (2) above does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

- (3) We will not pay you:

- (a) If the loss or damage is to property that is obsolete or useless to you; or

- (b) For any extra cost if you decide to repair or replace the damaged property with property of a better kind or quality or of larger capacity.

- (4) If you do not repair or replace the damaged property within 18 months after the date of the "accident", then we will pay only the smaller of the:

- (a) Cost it would have taken to repair; or

- (b) Actual cash value;

at the time of the "accident".

Paragraph (4) does not apply to any time period beyond the 18 months that we agree to in writing.

## 2. General Conditions

### a. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve us of an obligation under this Coverage Part.

### b. Liberalization

If we adopt any standard form revision for general use that would broaden coverage under this Coverage Part without additional premium, the broadened coverage will immediately apply to this Coverage Part if the revision is effective within 45 days prior to or during the policy period.

### c. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

### d. Object Group

All "objects" in use or connected ready for use and included in an "Object" Group Definition will be considered as individually described in the Declarations. The premiums of "objects" included in an "Object" Group Description will be adjusted as follows:

- (1) We will base the initial premium for these "objects" on information we obtain. The rates charged will be those in effect on the first day of coverage.

- (2) We will charge an additional premium for "objects" that are added to the policy after the effective date of this policy. The additional premium for these "objects" will be computed pro rata.

- (3) We will allow a return premium for "objects" that are removed from the policy after the effective date of the policy. The return premium will be computed pro rata from the time the "objects" are disconnected.

## e. Policy Period, Coverage Territory

Under this Coverage Part:

- (1) The "accident" must occur

- (a) During the Policy Period shown in the Declarations; and

- (b) Within the Coverage Territory.

- (2) The coverage territory is:

- (a) The United States of America; and

- (b) Puerto Rico

## f. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact concerning:

- (1) This Coverage Part;

- (2) The Covered Property; or

- (3) Your interest in the Covered Property.

## g. Suspension

Whenever an "object" is found to be in or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "object". This can be done by delivering or mailing a written notice of suspension to:

- (1) Your last known address; or

- (2) The address where the object is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "object".

If we suspend your insurance, you will get a pro rata refund of premium for that "object". But the suspension will be effective even if we have not yet made or offered a refund.

## F. DEFINITIONS

1. "Accident" means a sudden and accidental breakdown of the [object] or a part of the "object". At the time the breakdown occurs, it must manifest .

itself by physical damage to the "object" that necessitates repair or replacement.

None of the following is an "accident":

- a. Depletion, deterioration, corrosion or erosion;
- b. Wear and tear;
- c. Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- d. Breakdown of any vacuum tube, gas tube or brush;
- e. Breakdown of any electronic computer or electronic data processing equipment.
- f. Breakdown of any structure or foundation supporting the "object" or any of its parts; or
- g. The functioning of any safety or protective device.

Turbine Units may have a separate definition of "accident". If so, refer to the Declarations for the appropriate accident definition.

If a strike, riot, civil commotion, act of sabotage or vandalism results in an "accident", this insurance applies. However, the War and Military Action Exclusion and the conditions of this Coverage Part still apply.

2. "Hazardous Substance" means a substance declared to be hazardous to health by a governmental agency.

3. "Object" means the equipment shown in the Declarations. Full description of specific "object" categories are found in the Object Definitions endorsement attached to this Coverage Form.

4. "One Accident" means:

If an initial "accident" causes other "accidents" all will be considered ~~one~~ accident. All ~~accidents~~ at any one location that manifest themselves at the same time and are the result of the same cause will be considered ~~one~~ accident.

5. "Suit" means a civil proceeding and includes:

- a. An arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

INSURANCE RESERVE FUND

By

  
Director



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### OBJECT DEFINITIONS NO. 1, NO. 2, AND NO. 3

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### OBJECT DEFINITIONS NO. 1 - PRESSURE AND REFRIGERATION OBJECTS

This endorsement modifies insurance provided under the following:

##### BOILER AND MACHINERY COVERAGE FORM

#### 1. BOILERS, FIRED VESSELS AND ELECTRIC STEAM GENERATORS

a. "Object" means:

Any boiler, fired vessel or electric steam generator shown in the Declarations and includes any:

- (1) Steel economizer used solely with them; and
- (2) Steam boiler piping, valves, fittings, traps and separators;

but only if they:

- (a) Are on your premises or between parts of your premises; and
- (b) Contain steam or its condensate generated in whole or in part in an "object"; and

- (3) Feed water piping between any steam boiler and a feed pump or injector.

b. "Object" does not mean:

- (1) Any part not containing steam or water;
- (2) Any boiler setting;
- (3) Any insulating or refractory material;
- (4) Any piping not containing steam or its condensate;
- (5) Any buried piping;
- (6) Piping, radiators, coils, vessels or apparatus, other than those included above;
- (7) Any reciprocating or rotating machine; or
- (8) Any electrical apparatus.

c. Any of the following vessels listed below are included within the provisions of this section when used with an "object":

- (1) Condensate return tank;
- (2) Cushion or expansion tank used with a hot water heating boiler; and
- (3) Indirect water heater tank used for hot water supply service but only if it:
  - (a) Is directly in the water circulating system of the "object" it is used with; and
  - (b) Does not form part of a storage water tank.

- d. For any boiler or fired vessel, the furnace of the "object" and the gas passages from there to the atmosphere will be considered as outside the "object."

- e. An "object" using a heat transfer medium other than water or steam will be covered as though the medium were water and steam.

#### 2. UNFIRED VESSELS

- a. "Object" means any unfired vessel shown in the Declarations. However, "object" does not include any:

- (1) Electric steam generator
- (2) Part of a vessel that is not under:
  - (a) Pressure of the contents of the vessel; or
  - (b) Internal vacuum;
- (3) Insulating or refractory material;
- (4) Reciprocating or rotating apparatus within or forming a part of the vessel;
- (5) Electrical apparatus within or forming a part of the vessel;
- (6) Piping leading to and from the vessel;
- (7) Buried vessels or piping;
- (8) Cylinder containing a movable plunger or piston; or
- (9) Vessel, radiator, inductor, convector, or coil connected to or used with a refrigerating or air conditioning system.

- b. We will consider that the-connected ready for use- requirement of this Coverage Form and its endorsements has been met by any "object" in this section if that "object" is:

- (1) Periodically filled, moved, emptied and refilled in the course of its normal service; and
- (2) Used for storage of gas or liquid.

#### 3. REFRIGERATING AND AIR CONDITIONING VESSELS AND PIPING

- a. "Object" means any refrigerating or air conditioning vessel and piping shown in the Declarations consisting of:

- (1) Interconnected vessels, coils and piping that contain refrigerant;

- (2) Vessels heated directly or indirectly that:

- (a) Form part of an absorption type system; and
- (b) Function as a generator, refrigerator or concentrator; and

- (3) Valves and fittings.

When the "object" is an absorption system, it also includes hermetic solution pumps, hermetic evaporator refrigerant pumps and purge pumps (or compressors) together with their driving electric motors.

If the Declarations show-Additional Vessels and Piping Included-"object" will also include:

- (4) Vessels, radiators, coils and all interconnecting piping along with their valves and fittings, that are connected to or used with the system and within which steam, water, brine, or other solution is circulated for cooling, humidity control or space heating.

When a vessel uses a heat transfer medium other than water or steam, we will consider the medium or its vapor as substitutes for the words-water or steam-as used in this section.

- b. However, "object" does not include any:

- (1) Boiler;
- (2) Steam piping;
- (3) Reciprocating or rotating machine or apparatus;
- (4) Electrical apparatus except as included in paragraph (3) above;
- (5) Electronic computer or electronic data processing equipment as well as any hose, flexible device or nonmetallic pipe connected to such apparatus;
- (6) Vessel, cooling tower, reservoir or other source of supply of cooling water for a condenser or compressor as well as any water piping leading to or from such a source of supply; or
- (7) Buried vessel or piping.

#### 4. AUXILIARY PIPING

- a. "Object" means any piping shown in the Declarations including any valve, fitting, trap or separator on the piping.

- b. However, "object" does not include any:

- (1) Radiator, convactor, coil or other vessel or apparatus connected to that piping; or
- (2) Buried piping.

#### 5. SMALL COMPRESSING AND REFRIGERATION UNITS

- a. "Object" means any small compressing or refrigeration unit shown in the Declarations (not over 15 h.p. - maximum nameplate rating).
- b. However, "object" does not include any wiring or piping leading to and from the unit.

#### 6. AIR CONDITIONING UNITS

- a. "Object" means any air conditioning unit shown in the Declarations (not over 600,000 Btu per Hour - maximum nameplate rating) and including any:

- (1) Interconnected vessels, radiators, inductors, convectors and coils that make use of a refrigerant, steam, water, brine or other solution and form part of the unit;
- (2) Interconnecting piping, valves and fittings containing only a refrigerant, water, brine or other solution;
- (3) Vessels heated directly or indirectly that:
  - (a) Form part of an absorption type unit; and
  - (b) Function as a generator, regenerator or concentrator;
- (4) Compressors, pumps, fans and blowers used solely with the unit together with their driving electric motors; and
- (5) Control equipment used solely with the unit.

- b. However "object" does not include any:

- (1) Boiler;
- (2) Steam piping;
- (3) Vessels, cooling tower, reservoir or other source of supply of cooling water for a condenser or compressor, or water piping leading to or from such a source of supply;
- (4) Wiring or piping leading to or from the unit; or
- (5) Electronic computer or electronic data processing equipment.

### OBJECT DEFINITIONS NO. 2 - MECHANICAL OBJECTS

This endorsement modifies insurance provided under the following:

#### BOILER AND MACHINERY COVERAGE FORM

##### 1. DEEP-WELL PUMP UNITS

- a. "Object" means any deep-well pump unit shown in the Declarations including any:

- b. However, "object" does not include any:

- (1) Other electrical conductor;

- (2) Electronic computer or electronic data processing equipment;
- (3) Piping leading to or from the unit;
- (4) Mechanism, appliance or shaft connected to the unit; or
- (5) Well casing.

## 2. MISCELLANEOUS MACHINES, GEAR WHEELS AND ENCLOSED GEAR SETS

- a. "Object" means any machine shown in the Declarations including any control apparatus mounted on that machine
- b. However, "object" does not mean any:
  - (1) Mechanism or other apparatus connected to the machine, other than control apparatus included above;
  - (2) Shaft on which a machine described as a gear wheel is mounted or the bearings on any such shaft;
  - (3) Electrical apparatus;
  - (4) Electronic computer or electronic data processing equipment unless used to govern or control the machine;
  - (5) Felt, wire, screen, die, extrusion plate, swing hammer, grinding disc, cutting blade, chain, belt, clutch plate, brake pad or any part or tool subject to frequent, periodic replacement; or
  - (6) Piping or duct leading to or from the machine.

## 3. ENGINES, PUMPS, COMPRESSORS, FANS AND BLOWERS

- a. "Object" means any machine shown in the Declarations including any:
  - (1) Auxiliary or control apparatus mounted on that machine or the bed or frame of that machine;
  - (2) Auxiliary electric motor or other apparatus used solely to rotate that machine for starting or maintenance purposes;

- (3) Lubricating oil pump or fuel pump and its driving electric motors if used solely for that machine; and
- (4) When the machine is a reciprocating pump or a reciprocating compressor and:
  - (a) Forms an integral part of a steam engine or internal combustion engine; and
  - (b) Is connected to such an engine by coupling clutch or gear set; then
  - (c) "Object" also includes the driving engine and any interconnecting coupling, clutch or gear set.

- b. However, "object" does not include any:

- (1) Apparatus connected to the machine, other than auxiliary or control apparatus included under paragraph a.(1) above;
- (2) Electrical apparatus other than electric motors included under paragraphs a.(2) and (3) above;
- (3) Air tank;
- (4) Electronic computer or electronic data processing equipment;
- (5) Condenser or its adapter;
- (6) Piping or duct leading to or from the machine; or
- (7) Well casing.

## 4. WHEEL AND SHAFTING

"Object" means any wheel (except gear wheels) or shaft shown in the Declarations including any:

- a. Rotating part or parts of any wheel, pulley, disc or coupling excluding the shaft it is mounted on, any cutting blade; or the bearings for that shaft and
- b. Rotating shaft and its couplings and bearings.

## OBJECT DEFINITIONS NO. 3 - ELECTRICAL OBJECTS

This endorsement modifies insurance provided under the following:

### BOILER AND MACHINERY COVERAGE FORM

#### 1. ROTATING ELECTRICAL MACHINES, TRANSFORMERS, AND INDUCTION FEEDER REGULATORS

- a. "Object" means any rotating electrical machine, transformer, or induction feeder regulator shown in the Declarations. For rotating electrical machine, "object" also includes any:
  - (1) Exciter that is:
    - (a) Mechanically connected to that machine; and
    - (b) Used solely for excitation of that machine;

- (2) Shaft of that machine and any gear, wheel or magnetic brake mechanism on the shaft or on the frame of that machine, if the shaft does not form an integral part of any other machine;
- (3) Continuous shaft that:
  - (a) Forms an integral part of that machine; and
  - (b) Also forms an integral part of another rotating electric machine including any gear, wheel or magnetic brake mechanism on the shaft or on the frame of that machine;
- (4) Shaft coupled to that machine including the couplings and bearings on it, if there is no mechanism other than a coupling on the shaft; and

- (5) Non-rotating equipment used solely to start, stop or control any motor shown in the Declarations including all electrical conductors connecting such equipment with that motor provided that control equipment does not form a part of a switchboard, cubicle or bus structure controlling any electrical machine other than the motor.

b. However, "object" does not include any:

- (1) Electrical conductor or piping leading to or from the "object;" or
- (2) Electronic computer or electronic data processing equipment.

## 2. MISCELLANEOUS ELECTRICAL APPARATUS

a. "Object" means any electrical apparatus shown in the Declarations including any:

- (1) Rotating electrical machine used solely to operate a part of the apparatus; and
- (2) Instrument transformer.

b. However, "object" does not include any:

- (1) Rotating electrical machine other than a machine included above;
- (2) Transformer other than an instrument transformer included above;
- (3) Induction feeder regulator;
- (4) Electronic computer or electronic data processing equipment;
- (5) Solid state rectifier unit;

- (6) Conduit;

- (7) Electrical conductor or piping leading to or from such apparatus; or

- (8) Cabinet or compartment in which any part of the apparatus is installed.

## 3. SOLID STATE RECTIFIER UNITS

a. "Object" means any solid state rectifier unit shown in the Declarations including any:

- (1) Rectifier;
- (2) Transformer used solely with the unit, other than an arc-furnace transformer;
- (3) Heat exchanger used solely with the unit together with its interconnected vessels, coils and piping;
- (4) Cooling fan or pump and its driving electric motor if used solely with the unit; and
- (5) Electrical conductors connecting parts of the unit.

b. However, "object" does not mean any:

- (1) Electrical conductor or piping leading to or from the unit;
- (2) Electronic computer or electronic data processing equipment;
- (3) Equipment or apparatus other than that listed in paragraphs a.(1) through (5) above; or
- (4) Cabinet or compartment on or in which any part of the unit is installed.

INSURANCE RESERVE FUND

By



Director





## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### BOILER AND MACHINERY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the word "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. - DEFINITIONS.

#### A. COVERAGE

We will pay for direct damage to Covered Property caused by a Covered Cause of Loss.

##### 1. Covered Property

Covered Property, as used in this Coverage Part, means any property that:

- You own; or
- Is in your care, custody or control and for which you are legally liable.

##### 2. Property Not Covered

Covered Property does not include any:

- Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- Data stored on this media; or
- Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

##### 3. Covered Cause of Loss

A Covered Cause of Loss is an "accident" to an "object" shown in the Declarations. An "object" must be in use or connected ready for use at the location specified for it at the time of the "accident".

##### 4. Defense

- If there is damage to property of another in your care, custody or control and for which you are legally liable, that was directly caused by an "accident" to an "object," we will have the right and duty to defend you against any "suit" alleging liability for damage to that property. However, we have no duty to defend you against any "suit" alleging liability for damage to property not covered by this Coverage Form.
- If a claim or "suit" is brought against you alleging that you are liable for damage to property of another that was caused by an "accident" to an "object", we will either:

- Settle the claim or "suit"; or
- Defend you against the "suit" but keep for ourselves the right to settle it at any point.

#### 5. Coverage Extensions

##### a. Expediting Expenses

With respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- Make temporary repairs;
- Expedite permanent repairs; and
- Expedite permanent replacement.

We restrict the amount payable for Expediting Expenses as explained in the Limits of Insurance section of this Coverage Form.

##### b. Automatic Coverage For A Newly Acquired Location

We will automatically cover an "accident" to an "object" at a newly acquired location. This automatic coverage begins at the time you acquire the property and continues for 90 days, under the following conditions:

- You must inform us, in writing, of the newly acquired location within 90 days of the date you acquire it;
- The "object" must be in use or connected ready for use at the time of acquisition and throughout the period of automatic coverage and be of a type that would be included in any "Object" Group Description shown in the Declarations;
- The Limit of Insurance and Deductible amount will be the highest amounts shown in the Declarations for the same type of "object"
- We will not be liable under this coverage for Consequential Damage, Business Interruption, or any other indirect loss resulting from an "accident" to an "object"; and
- You agree to pay an additional premium as determined by us.

##### c. Supplementary Payments

We will pay, with respect to any claim or any "suit" we defend:

- All expenses we incur;
- The cost of bonds to release attachments, but only for bond amounts within in the Limit of Insurance. We do not have to furnish these bonds;

- (3) All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of the time off from work;
- (4) All costs taxed against you in any "suit" we defend;
- (5) Pre-judgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer; and
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the Limit of Insurance shown in the Declarations.

These payments will not reduce the Limit of Insurance.

## B. EXCLUSIONS

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

### 1. Ordinance or Law

Any increase in loss caused by or resulting from the enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration use, operation, construction or installation. As used here, increase in loss also includes expenses incurred beyond those for which we would have paid if no "hazardous substance" had been involved in the "accident".

### 2. Earth Movement

Any earth movement, including but not limited to earthquake, landslide, mudslide, subsidence or volcanic eruption.

### 3. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

### 4. War and Military Action

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

5. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not.
6. Lack of power, light, heat, steam or refrigeration.
7. An explosion. However, we will pay for direct loss or damage caused by an explosion of an "object" of a kind specified in a. through g. below, if covered

by this insurance and described on an Object Definitions endorsement that is a part of this policy, and is not otherwise excluded in this Section B.:

- a. Steam boiler;
- b. Electric steam generator;
- c. Steam piping;
- d. Steam turbine;
- e. Steam engine;
- f. Gas turbine; or
- g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.

8. Fire or explosion that occurs at the same time as an "accident" or that ensues from an "accident". With respect to any electrical equipment forming a part of an "object", this exclusion is changed to read:

Fire or explosion outside the "object" that occurs at the same time as an "accident" or ensues from an "accident".

9. The explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere, whether or not the explosion is:

- a. Contributed to or aggravated by an "accident" to any part of an "object" that contains steam or water; or
- b. Caused in whole or in part by an "accident" to an "object" or part of an "object".

10. An "accident" that is the result of an explosion or fire.

11. An "accident" to any "object" while being tested.

12. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.

13. An "accident" to:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells used in conjunction with an electronic computer or electronic data processing equipment.
- b. Data stored on this media; or
- c. Programming records used for electronic data processing or electronically controlled equipment;

whether or not the media or data is in actual use at the time of the "accident".

14. An "accident" that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have:

- a. Aircraft or Vehicles;
- b. Lightning;
- c. Sinkhole Collapse;
- d. Smoke;
- e. Sprinkler Leakage; or
- f. Weight or Snow, Ice, or Sleet.

15. An "accident" that is caused by either of the following causes of loss:

- a. Windstorm or Hail; or
- b. Freezing, caused by cold weather.

16. A delay in, or an interruption of, any business, manufacturing or processing activity.

17. Any other indirect result of an "accident" to an "object".

### C. LIMITS OF INSURANCE

- 1. We will not pay more than the applicable Limit of Insurance shown in the Declarations for all direct damage to Covered Property that results from any "one accident".
- 2. The following coverage limitations to our payment for direct damage to Covered Property are part of and not in addition to the Limit of Insurance for this Coverage Form.

#### a. Expediting Expenses

Our payment for Expediting Expenses will be limited to:

- (1) \$25,000; or
- (2) What is left of the Limit of Insurance after we pay your loss for Covered Property damaged by an "accident";

whichever is less.

#### b. Hazardous Substance Limitation

The following applies despite the operation of the Ordinance or Law Exclusion. This limitation does not apply to damage, contamination or pollution caused by ammonia.

If Covered Property is damaged, contaminated or polluted by a "hazardous substance" as a result of an "accident" to an "object", the most we will pay for any additional expenses incurred by you for clean up, repair or replacement or disposal of that property is \$25,000. As used here, additional expenses mean expenses incurred beyond those for which we would be liable if no "hazardous substance" had been involved.

#### c. Ammonia Contamination Limitation

If Covered Property is contaminated by ammonia as a result of an "accident" to an "object", the most we will pay for this kind of damage, including salvage expense, is \$25,000.

#### d. Water Damage Limitation

If Covered Property is damaged by water as a result of an "accident" to a covered refrigerating or air conditioning vessels and piping, the most we will pay for this kind of damage, including salvage expense, is \$25,000.

Any payment made under Section C will not increase if more than one insured is shown in the Declarations.

### D. DEDUCTIBLE

We will not pay for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance. If more than one "object" is involved in "one accident", only the highest Deductible will apply.

### E. BOILER AND MACHINERY CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

#### 1. Loss Conditions

##### a. Abandonment

There can be no abandonment of any property to us.

##### b. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal we will still retain our right to deny the claim.

##### c. Duties In the Event of Loss or Damage

- (1) You must see that the following are done in the event of loss or damage:
  - (a) Give us a prompt notice of the loss or damage. Include a description of the property involved.
  - (b) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (c) Allow us a reasonable time and opportunity to examine the property and premises before repairs are undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage.

(d) Permit us to inspect the property and records proving the loss or damage. Also permit us to take samples of damaged property for inspection, testing and analysis.

(e) If requested, permit us to question you under oath, at such times as may be reasonably required about any matter relating to this insurance on your claim, including your books and records. In such event, your answers must be signed.

(f) Send us a signed, sworn statement of loss containing the information we request to settle the claim. You must do this within 60 days after our request.

(g) Cooperate with us in the investigation or settlement of the claim.

(2) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**d. Insurance Under Two or More Coverages**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage subject to the Limit of Insurance.

**e. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Part unless:

- (1) There has been full compliance with all the terms of this Coverage Part; and
- (2) The action is brought within 2 years after the date of the "accident"; or
- (3) We agree in writing you have an obligation to pay for damage to Covered Property of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this policy to bring us into an action to determine your liability.

**f. Loss Payable Clause**

- (1) We will pay you and the loss payee shown in the Declarations for loss due to an "accident" to an "object", as interests may appear. The insurance covers the interests of the loss payee unless the results from conversion, secretion or embezzlement on your part.
- (2) We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest.
- (3) If we make any payment to the loss payee, we will obtain their rights against any other property.

**g. Other Insurance**

(1) You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.

(2) If there is other insurance covering the same loss or damage, other than that described in (1) above, we will pay only the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not.

In no case will we pay more than the applicable Limit of Insurance.

**h. Privilege to Adjust With Owner**

In the event of loss or damage involving property of others in your care, custody or control, we have the right to settle the loss or damage with the owner of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.

**i. Transfer of Rights of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them.

**j. Valuation**

(1) We will pay you the amount you spend to repair or replace your property directly damaged by an "accident". Our payment will be the smallest of:

- (a) The Limit of Insurance;
  - (b) The cost at the time of the "accident" to repair the damaged property with property of like kind, capacity, size and quality;
  - (c) The cost at the time of the "accident" to replace the damaged property on the same site with other property:
    - (i) Of like kind, capacity, size and quality; and
    - (ii) Used for the same purpose;
  - (d) The amount you actually spend that is necessary to repair or replace the damaged property.
- (2) As respects any "object", if the cost of repairing or replacing only a part of the "object" is greater than:
- (a) The cost of repairing the "object"; or

- (b) The cost of replacing the entire "object" on the same site;

we will pay only the smaller of (a) or (b).

The repair parts or replacement "object" must be

- (c) Of like kind, capacity, size and quality; and

- (d) Used for the same purpose.

The cost of repair or replacement in (1) and (2) above does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

- (3) We will not pay you:

- (a) If the loss or damage is to property that is obsolete or useless to you; or

- (b) For any extra cost if you decide to repair or replace the damaged property with property of a better kind or quality or of larger capacity.

- (4) If you do not repair or replace the damaged property within 18 months after the date of the "accident", then we will pay only the smaller of the:

- (a) Cost it would have taken to repair; or

- (b) Actual cash value;

at the time of the "accident".

Paragraph (4) does not apply to any time period beyond the 18 months that we agree to in writing.

## 2. General Conditions

### a. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve us of an obligation under this Coverage Part.

### b. Liberalization

If we adopt any standard form revision for general use that would broaden coverage under this Coverage Part without additional premium, the broadened coverage will immediately apply to this Coverage Part if the revision is effective within 45 days prior to or during the policy period.

### c. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

### d. Object Group

All "objects" in use or connected ready for use and included in an "Object" Group Definition will be considered as individually described in the Declarations. The premiums of "objects" included in an "Object" Group Description will be adjusted as follows:

- (1) We will base the initial premium for these "objects" on information we obtain. The rates charged will be those in effect on the first day of coverage.

- (2) We will charge an additional premium for "objects" that are added to the policy after the effective date of this policy. The additional premium for these "objects" will be computed pro rata.

- (3) We will allow a return premium for "objects" that are removed from the policy after the effective date of the policy. The return premium will be computed pro rata from the time the "objects" are disconnected.

## e. Policy Period, Coverage Territory

Under this Coverage Part:

- (1) The "accident" must occur

- (a) During the Policy Period shown in the Declarations; and

- (b) Within the Coverage Territory.

- (2) The coverage territory is:

- (a) The United States of America; and

- (b) Puerto Rico

## f. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you relating to it. It is also void if you intentionally conceal or misrepresent a material fact concerning:

- (1) This Coverage Part;

- (2) The Covered Property; or

- (3) Your interest in the Covered Property.

## g. Suspension

Whenever an "object" is found to be in or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "object". This can be done by delivering or mailing a written notice of suspension to:

- (1) Your last known address; or

- (2) The address where the object is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "object".

If we suspend your insurance, you will get a pro rata refund of premium for that "object". But the suspension will be effective even if we have not yet made or offered a refund.

## F. DEFINITIONS

1. "Accident" means a sudden and accidental breakdown of the [object] or a part of the "object". At the time the breakdown occurs, it must manifest.

itself by physical damage to the "object" that necessitates repair or replacement.

None of the following is an "accident":

- a. Depletion, deterioration, corrosion or erosion;
- b. Wear and tear;
- c. Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
- d. Breakdown of any vacuum tube, gas tube or brush;
- e. Breakdown of any electronic computer or electronic data processing equipment.
- f. Breakdown of any structure or foundation supporting the "object" or any of its parts; or
- g. The functioning of any safety or protective device.

Turbine Units may have a separate definition of "accident". If so, refer to the Declarations for the appropriate accident definition.

If a strike, riot, civil commotion, act of sabotage or vandalism results in an "accident", this insurance applies. However, the War and Military Action Exclusion and the conditions of this Coverage Part still apply.

2. "Hazardous Substance" means a substance declared to be hazardous to health by a governmental agency.

3. "Object" means the equipment shown in the Declarations. Full description of specific "object" categories are found in the Object Definitions endorsement attached to this Coverage Form.

4. "One Accident" means:

If an initial "accident" causes other "accidents" all will be considered [one accident]. All [accidents] at any one location that manifest themselves at the same time and are the result of the same cause will be considered [one accident].

5. "Suit" means a civil proceeding and includes:

- a. An arbitration proceeding in which damages are claimed and to which you must submit or do submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which damages are claimed and to which you submit with our consent.

INSURANCE RESERVE FUND

By



Director

- i. "Business income" means net income that would have been earned or incurred or continuing normal operating expenses.
- ii. "Extra expense" means the additional expenses that are necessary to avoid or minimize the interruption of business.

b. ADDITIONAL COVERAGES INCLUDE:

"Civil authority" applies to the extra expense caused by a civil authority prohibiting access to the damaged property.

"Alterations and new buildings" applies to new structures or alterations and begins on the date that operations would have begun except for the occurrence of the loss.

"Extended business income" applies to additional loss of business income after property is actually repaired and operations are resumed, until the business can be restored, with reasonable speed, to the condition that would have existed had no loss occurred.

6. BUILDER'S RISK (Form PD23 01-91)

- a. COVERAGE: The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on a replacement cost basis with a 100% coinsurance clause. A standard \$1,000 deductible applies to each occurrence.

- i. "Covered property" includes the structure under construction, foundations, and, if intended to become a permanent part of the structure, fixtures, machinery, equipment, building materials and supplies within 100 feet of the premises.
- ii. "Property not covered" includes land, lawns, trees, shrubs and plants, radio and television antennas, and signs not attached to buildings.

b. ADDITIONAL COVERAGES INCLUDE:

"Debris removal" applies to the expenses incurred in cleaning up covered property after a covered cause of loss, up to 25% of the direct physical loss.

"Preservation of property" applies to property moved from an insured location for protection from loss by a covered peril.

"Fire department service charge" applies to service charges assessed by a fire department, up to \$1,000.

"Pollutant clean up and removal" applies to expenses incurred to extract pollutants from land or water at a covered location, if the discharge is caused by or results from a covered cause of loss, up to \$10,000.



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

## BUILDERS RISK COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words, "you" and "your" refer to Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION G - DEFINITIONS.

### A. COVERAGE

We will pay for direct physical loss or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property

Covered Property, as used in this Coverage Part, means the following type of property for which a Limit of Insurance is shown in the Declarations:

**Building Under Construction**, meaning the building or structure described in the Declarations while in the course of construction, including:

- a. Foundations;
- b. If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:
  - (1) Fixtures, machinery and equipment used to service the building; and
  - (2) Your building materials and supplies used for construction;
- c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

#### 2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
  - (1) Lawns, trees, shrubs or plants;
  - (2) Radio or television antennas, including their lead-in wiring, masts or towers; or
  - (3) Signs (other than signs attached to buildings).

#### 3. Covered Causes of Loss

See applicable Causes of Loss Form as shown in the Declarations.

#### 4. Additional Coverages

##### a. Debris Removal

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from

a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (a) The date of direct physical loss or damage; or
  - (b) The end of the policy period.
- (2) The most we will pay under this Additional Coverage is 25% of:

- (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
- (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

- (3) This Additional Coverage does not apply to costs to:

- (a) Extracts "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

##### b. Preservation of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 10 days after the property is first moved.

##### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No deductible applies to this Additional Coverage.



**d. Pollutant Clean Up and Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge or dispersal of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) The date of direct physical loss or damage; or
- (2) The end of the policy period.

The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**5. Building Materials and Supplies of Others**

- a. You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:
  - (1) Owned by others;
  - (2) In your care, custody or control;
  - (3) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
  - (4) Intended to become a permanent part of the building.
- b. The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to property of others will only be for the account of the owner of the property.

This Extension is additional insurance.

**B. EXCLUSIONS**

See applicable Cause of Loss Form as shown in the Declarations

**C. LIMITS OF INSURANCE**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extension and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
2. Debris Removal; but if:
  - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or

- b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;

we will pay up to an Additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

**D. DEDUCTIBLE**

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

**E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and the umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event of Loss or Damage**

You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the claim. This will not increase the Limit of Insurance.

- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- f. Permit us to inspect the property and records proving the loss or damage.  
  
Also permit us to take samples of damaged property for inspection, testing and analysis.
- g. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
- h. Send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- i. Cooperate with us in the investigation or settlement of the claim.

#### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interests in the Covered Property.
- e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- f. We will pay for covered loss or damage within 30 days after we receive the sworn statement of loss, if:
  - (1) You have complied with all of the terms of this Coverage Part; and
  - (2) (a) We have reached agreement with you on the amount of loss; or  
(b) An appraisal award has been made.

#### 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### 6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

#### F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

##### 1. Mortgage Holders

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may be appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

(1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

## 2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When: The value of the building  
on the date of completion is \$200,000  
The Limit of Insurance for it is \$100,000  
The Deductible is \$250  
The amount of loss is \$80,000

Step 1:  $\$100,000 / \$200,000 = .50$

Step 2:  $\$80,000 \times .50 = \$40,000$

Step 3:  $\$40,000 - \$250 = \$39,750$

We will pay no more than \$39,750. The remaining \$40,250 is not covered.

Example No. 2 (Adequate Insurance):

When: The value of the building  
on the date of completion is \$200,000  
The Limit of Insurance for it is \$200,000  
The Deductible is \$250  
The amount of loss is \$80,000

Step 1:  $\$200,000 / \$200,000 = 1.00$

Step 2:  $\$80,000 \times 1.00 = \$80,000$

Step 3:  $\$80,000 - \$250 = \$79,750$

We will cover the \$79,750 loss in excess of the Deductible. No penalty applies.

## 3. Restriction of Additional Coverage - Collapse

If the Additional Coverage - Collapse is included in the Causes of Loss Form applicable to this coverage form, paragraph 6 of that Additional Coverage does not apply to this coverage form.

## 4. Waiver of Rights of Recovery Against Others

You may not waive your rights to recover damages from an architect, engineer or building trades contractor or subcontractor with respect to the described premises except as agreed to in writing by us. This provision supersedes any provisions to the contrary in the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Commercial Property Condition.

## 5. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- This policy expires or is cancelled;
- The property is accepted by the purchaser;
- Your interest in the property ceases;
- You abandon the construction with no intention to complete it;
- Unless we specify otherwise in writing:
  - 90 days after construction is complete; or
  - When any building described in the Declarations is:
    - Occupied in whole or in part; or
    - Put to its intended use.

## G. DEFINITIONS

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

INSURANCE RESERVE FUND

By



Director

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Tuesday, November 17, 2015 4:11 PM  
**To:** Robbie Ferris  
**Subject:** RE: HCS contracts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

There is a clause about this in my draft, but I had no amounts. I only used \$500K as the "catch up" billing allowable (per project) simply because I heard you say near the end of the competition that you had about \$2.5M invested, but if the concept is the same I don't see a big difference in using your enclosed figures if HCS concurs.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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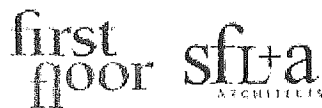
**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 3:45 PM  
**To:** Keith R. Powell  
**Subject:** HCS contracts

Keith,

All the needed sign offs are still coming in from our team but I think we're very close to being checked off. I do have one revision request. We would like to bill for pre-construction, proposal development and schematic design. The breakdown is in the attachment but the total is \$5,504,430.00. We are actually in DD so I think billing for SD is very reasonable.

What do you think?

Robbie



Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Tuesday, November 17, 2015 6:44 PM  
**To:** Clark, Brad  
**Cc:** Robbie Ferris  
**Subject:** Re: HCS | Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Sure - have asked district for it. IRF is an odd bird - they cover hurricanes and civil rights violations well but not so good on normal commercial stuff. You might need a DOC policy or consider the DB taking all the builders risk if you can get a premium comparable to HCS's costs it could consider reimbursing.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 5:31 PM, Clark, Brad <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)> wrote:

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 17, 2015 1:22 PM  
**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell  
**Cc:** Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))  
**Subject:** FW: HCS | Exhibit B

**Keith,**  
**Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!**  
**Feel free to call Brad directly to discuss his concerns.**  
**Robbie**

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <[NZabrud@sfla.biz](mailto:NZabrud@sfla.biz)>, Mike Wawrzyniak  
<[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples" <[kpeeples@bbandt.com](mailto:kpeeples@bbandt.com)>,  
Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter  
<[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject: Fwd: Hcs**

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark  
Wolfe <[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz  
([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))"  
<[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner  
<[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>, Kenneth Generette  
<[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>,

"[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)"  
<[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
Cc: "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
Subject: RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 10:14 AM  
**To:** Robbie Ferris  
**Subject:** Re: hcs draw request.xlsx  
**Attachments:** image001.jpg

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Thanks. Discussing all (finally) with HCS today.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 18, 2015, at 10:04 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith, I should have put the names on the schools. See the new attachment. Also I made a \$10,000 typo on the Myrtle beach MS that I send you last night. This version is corrected. The amount in this spreadsheet aligns with our schedule of values so hopefully these amounts will be ok with you but if not we could round it to 1,100,000 per school. Rounding just means we would have to re do the schedule of values and it would get a little messy with subs.

I am planning on being at HCS at 3 to sign everything unless I hear otherwise from you.

Robbie

<image001.jpg>

Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

<hcs draw request.xlsx>

**Sheri L. Wainscott**

---

**From:** Clark, Brad <Brad.Clark@BBandT.com>  
**Sent:** Tuesday, November 17, 2015 5:31 PM  
**To:** Keith R. Powell; Robbie Ferris  
**Subject:** RE: HCS | Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
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Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

---

**From:** Keith R. Powell [mailto:[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)]  
**Sent:** November 17, 2015 1:22 PM  
**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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---

**From:** Robbie Ferris [mailto:[RFerris@sfla.biz](mailto:RFerris@sfla.biz)]  
**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell

Cc: Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))

**Subject:** FW: HCS | Exhibit B

Keith,

Apparently our insurance company sent me an email about this a few days ago that I never sent you.

Sorry!!

Feel free to call Brad directly to discuss his concerns.

Robbie

Robbie/Mike,

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- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
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Thanks,

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678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth

**Sent:** November 17, 2015 10:30 AM

**To:** Blanchard, Kathy; Clark, Brad

**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell

Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zablud <NZablud@sfla.biz>, Mike Wawrzyniak <mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>, Aaron Thomas <athomas@metconus.com>, Mike Richter <mrichter@taloving.com>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <kpowell@childs-halligan.net>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz (AHeinz@horrycountyschools.net)" <AHeinz@horrycountyschools.net>, John Gardner <JGardner@horrycountyschools.net>, Kenneth Generette <KGenerette@horrycountyschools.net>, "rmaxey@horrycountyschools.net" <rmaxey@horrycountyschools.net>  
**Cc:** "William F. Halligan" <bhalligan@childs-halligan.net>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
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Columbia, South Carolina  
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Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

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## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Wednesday, November 18, 2015 10:04 AM  
**To:** Keith R. Powell  
**Subject:** hcs draw request.xlsx  
**Attachments:** hcs draw request.xlsx

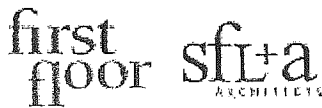
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

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Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

	Myrtle beach MS	Carolina forest	St James Inter
Firstfloor Proposl Dev	\$ 253,187.00	\$ 250,165.00	\$ 260,035.00
Pre construction estimating and bidding	\$ 126,000.00	\$ 126,000.00	\$ 126,000.00
A&E-Schematic design	\$ 760,840.00	\$ 741,878.00	\$ 771,147.00
	\$ 1,140,027.00	\$ 1,118,043.00	\$ 1,157,182.00



Socastee ES	Socastee MS	totals
\$ 206,721.00	\$ 231,417.00	\$ 1,201,525.00
\$ 126,000.00	\$ 126,000.00	\$ 630,000.00
\$ 722,760.00	\$ 686,280.00	\$ 3,682,905.00
\$ 1,055,481.00	\$ 1,043,697.00	\$ 5,514,430.00

**Sheri L. Wainscott**

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Wednesday, November 18, 2015 12:27 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Great, the 2.5 mil was sfla internal cost and it did not include consultants or estimators. It was my SD fee for architectural only.

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 4:11 PM  
**To:** Robbie Ferris  
**Subject:** RE: HCS contracts

There is a clause about this in my draft, but I had no amounts. I only used \$500K as the "catch up" billing allowable (per project) simply because I heard you say near the end of the competition that you had about \$2.5M invested, but if the concept is the same I don't see a big difference in using your enclosed figures if HCS concurs.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 3:45 PM  
**To:** Keith R. Powell  
**Subject:** HCS contracts

Keith,

All the needed sign offs are still coming in from our team but I think we're very close to being checked off. I do have one revision request. We would like to bill for pre-construction, proposal development and schematic design. The breakdown is in the attachment but the total is \$5,504,430.00. We are actually in DD so I think billing for SD is very reasonable.

What do you think?

Robbie

first  
floor sfla  
ARCHITECTS

Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
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Fax: 919.573.6355  
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[www.sfla.biz](http://www.sfla.biz)

## **Sheri L. Wainscott**

---

**From:** Clark, Brad <Brad.Clark@BBandT.com>  
**Sent:** Wednesday, November 18, 2015 2:17 PM  
**To:** Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)  
**Subject:** RE: HCS | Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
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919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

---

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 12:56 PM  
**To:** Clark, Brad; Robbie Ferris (RFerris@sfla.biz)  
**Subject:** FW: HCS | Exhibit B  
**Importance:** High

Attached info for your use.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
*Ara*

Ara Heinz | Procurement Services | P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

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**From:** "Clark, Brad" <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)>  
**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
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**Subject:** FW: HCS | Exhibit B

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Feel free to call Brad directly to discuss his concerns.  
Robbie

Robbie/Mike,

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[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

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**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <[NZabrud@sfla.biz](mailto:NZabrud@sfla.biz)>, Mike Wawrzyniak  
<[mwawrzyniak@sfla.biz](mailto:mwawrzyniak@sfla.biz)>, "Kenneth J. Peeples" <[kpceeples@bbandt.com](mailto:kpceeples@bbandt.com)>,  
Aaron Thomas <[athomas@metconus.com](mailto:athomas@metconus.com)>, Mike Richter  
<[mrichter@taloving.com](mailto:mrichter@taloving.com)>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

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**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))" <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>, Mark Wolfe <[MWolfe002@horrycountyschools.net](mailto:MWolfe002@horrycountyschools.net)>, "Ara Heinz ([AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net))" <[AHeinz@horrycountyschools.net](mailto:AHeinz@horrycountyschools.net)>, John Gardner <[JGardner@horrycountyschools.net](mailto:JGardner@horrycountyschools.net)>, Kenneth Generette <[KGenerette@horrycountyschools.net](mailto:KGenerette@horrycountyschools.net)>, "rmaxey@horrycountyschools.net" <[rmaxey@horrycountyschools.net](mailto:rmaxey@horrycountyschools.net)>  
**Cc:** "William F. Halligan" <[bhalligan@childs-halligan.net](mailto:bhalligan@childs-halligan.net)>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
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**Sheri L. Wainscott**

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Wednesday, November 18, 2015 3:07 PM  
**To:** Keith R. Powell  
**Subject:** Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,  
How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 12:56 PM  
**To:** Clark, Brad (Brad.Clark@BBandT.com) (Brad.Clark@BBandT.com); Robbie Ferris (RFerris@sfla.biz)  
**Subject:** FW: HCS | Exhibit B  
**Attachments:** Architect Fees Limitations.pdf; Builder's Risk Policy Info.pdf; Causes of Loss - Earthquake.pdf; Causes of Loss.pdf; Endorsement Clauses - Certificates.pdf; Flood Insurance.pdf; SC Changes - Valuation.pdf

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Attached info for your use.

Keith R. Powell  
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Columbia, South Carolina  
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**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

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Regards,  
*Ara*

Ara Heinz | Procurement Services | P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: Procurement.horrycountyschools.net



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**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
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**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
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[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 17, 2015 1:22 PM  
**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell  
**Cc:** Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))  
**Subject:** FW: HCS | Exhibit B

Keith,  
**Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!**  
**Feel free to call Brad directly to discuss his concerns.**  
**Robbie**

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peeples, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peeples  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zablud <NZablud@sfla.biz>, Mike Wawrzyniak  
<mawawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>,  
Aaron Thomas <athomas@metconus.com>, Mike Richter  
<mrichter@taloving.com>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <kpowell@childs-halligan.net>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark  
Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz  
(AHeinz@horrycountyschools.net)"  
<AHeinz@horrycountyschools.net>, John Gardner  
<JGardner@horrycountyschools.net>, Kenneth Generette  
<KGenerette@horrycountyschools.net>,  
"rmaxey@horrycountyschools.net"  
<rmaxey@horrycountyschools.net>  
**Cc:** "William F. Halligan" <bhalligan@childs-halligan.net>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on  
HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.

Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 17, 2015, at 7:43 AM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith

Can you send the latest version of the contract for review

Robbie

Sent from my iPhone

*The information in this transmission may contain proprietary and non-public information of BB&T or its affiliates and may be subject to protection under the law. The message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.*



STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

ARCHITECT FEES LIMITATIONS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL COVERAGE FORM  
BUILDERS RISK COVERAGE FORM

With respect to PD 05 01 01 Section C. Limitations, the following is added:

6. The payment of architect's fees to include plans and specifications, engineering studies and supervision of construction is limited to losses greater than \$100,000 in total project cost.

INSURANCE RESERVE FUND

By

A handwritten signature in cursive script, reading "Anne Macdonald Smith", written over a horizontal line.

Director





## **POLICYHOLDER'S MANUAL**

**ALL LINES**

**STATE FISCAL ACCOUNTABILITY AUTHORITY  
INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
1201 MAIN STREET - SUITE 500  
COLUMBIA, SOUTH CAROLINA 29201**

**PHONE NUMBER (MAIN)**

**803-737-0020**

**FAX NUMBERS**

**803-737 0393 - Underwriting**

**803-737-3757 - Medical Professional Liability**

**803-737-0042 - Claims**

**July 2015 (REV.)**

- i. "Business income" means net income that would have been earned or incurred or continuing normal operating expenses.
- ii. "Extra expense" means the additional expenses that are necessary to avoid or minimize the interruption of business.

b. **ADDITIONAL COVERAGES INCLUDE:**

"Civil authority" applies to the extra expense caused by a civil authority prohibiting access to the damaged property.

"Alterations and new buildings" applies to new structures or alterations and begins on the date that operations would have begun except for the occurrence of the loss.

"Extended business income" applies to additional loss of business income after property is actually repaired and operations are resumed, until the business can be restored, with reasonable speed, to the condition that would have existed had no loss occurred.

6. **BUILDER'S RISK (Form PD23 01-91)**

- a. **COVERAGE:** The Fund will pay for direct physical loss of or damage to covered property unless excluded or limited. Coverage is written on a replacement cost basis with a 100% coinsurance clause. A standard \$1,000 deductible applies to each occurrence.

- i. "Covered property" includes the structure under construction, foundations, and, if intended to become a permanent part of the structure, fixtures, machinery, equipment, building materials and supplies within 100 feet of the premises.
- ii. "Property not covered" includes land, lawns, trees, shrubs and plants, radio and television antennas, and signs not attached to buildings.

b. **ADDITIONAL COVERAGES INCLUDE:**

"Debris removal" applies to the expenses incurred in cleaning up covered property after a covered cause of loss, up to 25% of the direct physical loss.

"Preservation of property" applies to property moved from an insured location for protection from loss by a covered peril.

"Fire department service charge" applies to service charges assessed by a fire department, up to \$1,000.

"Pollutant clean up and removal" applies to expenses incurred to extract pollutants from land or water at a covered location, if the discharge is caused by or results from a covered cause of loss, up to \$10,000.



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### BUILDERS RISK COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words, "you" and "your" refer to Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Insurance Reserve Fund.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION G - DEFINITIONS.

#### A. COVERAGE

We will pay for direct physical loss or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

##### 1. Covered Property

Covered Property, as used in this Coverage Part, means the following type of property for which a Limit of Insurance is shown in the Declarations:

**Building Under Construction**, meaning the building or structure described in the Declarations while in the course of construction, including:

- a. Foundations;
- b. If intended to become a permanent part of the building or structure described in the Declarations, the following property located in or on the building or structure or within 100 feet of its premises:
  - (1) Fixtures, machinery and equipment used to service the building; and
  - (2) Your building materials and supplies used for construction;
- c. If not covered by other insurance, temporary structures built or assembled on site, including cribbing, scaffolding and construction forms.

##### 2. Property Not Covered

Covered Property does not include:

- a. Land (including land on which the property is located) or water;
- b. The following property when outside of buildings:
  - (1) Lawns, trees, shrubs or plants;
  - (2) Radio or television antennas, including their lead-in wiring, masts or towers; or
  - (3) Signs (other than signs attached to buildings).

##### 3. Covered Causes of Loss

See applicable Causes of Loss Form as shown in the Declarations.

##### 4. Additional Coverages

###### a. Debris Removal

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from

a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (a) The date of direct physical loss or damage; or
- (b) The end of the policy period.

- (2) The most we will pay under this Additional Coverage is 25% of:

- (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
- (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in the Limits of Insurance section.

- (3) This Additional Coverage does not apply to costs to:

- (a) Extracts "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

##### b. Preservation of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only of the loss or damage occurs within 10 days after the property is first moved.

##### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No deductible applies to this Additional Coverage.

**d. Pollutant Clean Up and Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the release, discharge or dispersal of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:

- (1) The date of direct physical loss or damage; or
- (2) The end of the policy period.

The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**5. Building Materials and Supplies of Others**

- a. You may extend the insurance provided by this Coverage Form to apply to building materials and supplies that are:

- (1) Owned by others;
- (2) In your care, custody or control;
- (3) Located in or on the building described in the Declarations, or within 100 feet of its premises; and
- (4) Intended to become a permanent part of the building.

- b. The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to property of others will only be for the account of the owner of the property.

This Extension is additional Insurance.

**B. EXCLUSIONS**

See applicable Cause of Loss Form as shown in the Declarations

**C. LIMITS OF INSURANCE**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extension and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
2. Debris Removal; but if:
  - a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or

- b. The debris removal expense exceeds the amount payable under the 25% limitation in the Debris Removal Additional Coverage;

we will pay up to an Additional \$5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

**D. DEDUCTIBLE**

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance.

**E. LOSS CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and the umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties in The Event of Loss or Damage**

You must see that the following are done in the event of loss or damage to Covered Property:

- a. Notify the police if a law may have been broken.
- b. Give us prompt notice of the loss or damage. Include a description of the property involved.
- c. As soon as possible, give us a description of how, when and where the loss or damage occurred.
- d. Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the claim. This will not increase the Limit of Insurance.

- e. At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - f. Permit us to inspect the property and records proving the loss or damage.  
  
Also permit us to take samples of damaged property for inspection, testing and analysis.
  - g. If requested, permit us to question you under oath at such times as may be reasonably required about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.
  - h. Send us a signed, sworn statement of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - i. Cooperate with us in the investigation or settlement of the claim.
- 4. Loss Payment**
- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
    - (1) Pay the value of lost or damaged property;
    - (2) Pay the cost of repairing or replacing the lost or damaged property;
    - (3) Take all or any part of the property at an agreed or appraised value; or
    - (4) Repair, rebuild or replace the property with other property of like kind and quality.
  - b. We will give notice of our intentions within 30 days after we receive the sworn statement of loss.
  - c. We will not pay you more than your financial interest in the Covered Property.
  - d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interests in the Covered Property.
  - e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
  - f. We will pay for covered loss or damage within 30 days after we receive the sworn statement of loss, if:
    - (1) You have complied with all of the terms of this Coverage Part; and
    - (2) (a) We have reached agreement with you on the amount of loss; or  
(b) An appraisal award has been made.

## 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

## 6. Valuation

We will determine the value of Covered Property at actual cash value as of the time of loss or damage.

## F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Mortgage Holders

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

f. If we cancel this policy, we will give written notice to the mortgage holder at least:

- (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
- (2) 30 days before the effective date of cancellation if we cancel for any other reason.

g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.

## 2. Need For Adequate Insurance

We will not pay a greater share of any loss than the proportion that the Limit of Insurance bears to the value on the date of completion of the building described in the Declarations.

Example No. 1 (Underinsurance):

When: The value of the building on the date of completion is	\$200,000
The Limit of Insurance for it is	\$100,000
The Deductible is	\$250
The amount of loss is	\$80,000

Step 1:  $\$100,000 / \$200,000 = .50$

Step 2:  $\$80,000 \times .50 = \$40,000$

Step 3:  $\$40,000 - \$250 = \$39,750$

We will pay no more than \$39,750. The remaining \$40,250 is not covered.

Example No. 2 (Adequate Insurance):

When: The value of the building on the date of completion is	\$200,000
The Limit of Insurance for it is	\$200,000
The Deductible is	\$250
The amount of loss is	\$80,000

Step 1:  $\$200,000 / \$200,000 = 1.00$

Step 2:  $\$80,000 \times 1.00 = \$80,000$

Step 3:  $\$80,000 - \$250 = \$79,750$

We will cover the \$79,750 loss in excess of the Deductible. No penalty applies.

## 3. Restriction of Additional Coverage - Collapse

If the Additional Coverage - Collapse is included in the Causes of Loss Form applicable to this coverage form, paragraph 6 of that Additional Coverage does not apply to this coverage form.

## 4. Waiver of Rights of Recovery Against Others

You may not waive your rights to recover damages from an architect, engineer or building trades contractor or subcontractor with respect to the described premises except as agreed to in writing by us. This provision supersedes any provisions to the contrary in the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Commercial Property Condition.

## 5. When Coverage Ceases

The insurance provided by this Coverage Form will end when one of the following first occurs:

- a. This policy expires or is cancelled;
- b. The property is accepted by the purchaser;
- c. Your interest in the property ceases;
- d. You abandon the construction with no intention to complete it;
- e. Unless we specify otherwise in writing:
  - (1) 90 days after construction is complete; or
  - (2) When any building described in the Declarations is:
    - (a) Occupied in whole or in part; or
    - (b) Put to its intended use.

## G. DEFINITIONS

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

INSURANCE RESERVE FUND

By



Director



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

#### A. Cancellation and Non-Renewal

1. The first Named Insured shown in the Declaration may cancel this policy by mailing to the Insurance Reserve Fund a 90 day written advance notice stating when thereafter the cancellation shall be effective. A political subdivision may cancel all policies with the Insurance Reserve Fund by mailing to the Fund a 90 day written advance notice as provided in §15-78-140 of the South Carolina Code of Laws.
2. The Insurance Reserve Fund may cancel this policy for nonpayment of premium by mailing a notice of cancellation giving not less than 30 days notice of the cancellation as provided in §15-78-160 of the South Carolina Code of Laws.
3. If this policy is cancelled in accordance with (1) or (2) above, earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
4. For the purposes of this policy, the term non-renewal shall mean cancellation if the insured is ceasing all coverages with the Insurance Reserve Fund and conditions as provided in sections (1), (2) and (3) apply.

#### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Name Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

#### C. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

#### D. Inspections and Surveys

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or

2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.

#### E. Premiums

The first named insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

#### F. Transfer of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

INSURANCE RESERVE FUND

By

Director



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

#### A. CONCEALMENT, MISREPRESENTATION, OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning.

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

#### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

#### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

#### D. ILLEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

#### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

#### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

#### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

#### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

#### I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHER TO US

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them.

INSURANCE RESERVE FUND

By

Director





# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

## CAUSES OF LOSS - EARTHQUAKE FORM

### COMMERCIAL PROPERTY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### A. COVERED CAUSES OF LOSS

When Earthquake is shown in the Declarations, Covered Causes of Loss means the following:

1. Earthquake.
2. Volcanic eruption, meaning the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

#### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

##### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

##### b. Governmental Action

Seizure or destruction of property by order of governmental authority.

##### c. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

##### d. Power Failure

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if the loss or damage by a Covered Cause of Loss results, we will pay for that resulting or damage.

##### e. War and Military Action

- (1) War, including undeclared or civil war
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

2. We will not pay for loss or damage caused by or resulting from:

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.
- b. Fire, explosion (other than volcanic explosion), landslide, mine subsidence, tidal wave, flood, mudslide or mudflow, even if attributable to an Earthquake or Volcanic Eruption.
- c. Any Earthquake or Volcanic Eruption that begins before the inception of this insurance.

#### 3. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

- a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:

- (a) Damage or destruction of "finished stock"; or
- (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas, including their lead-in wiring, masts or towers.

- (3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming operations, due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".

- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

b. Leasehold Interest Coverage Form

- (1) Paragraph B.1.a. Ordinance or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your canceling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

c. Legal Liability Coverage Form

- (1) The following Exclusions do not apply to insurance under this Coverage Form.
  - (a) Paragraph B.1.a., Ordinance or Law;
  - (b) Paragraph B.1.b., Governmental Action;
  - (c) Paragraph B.1.c., Nuclear Hazard
  - (d) Paragraph B.1.d., Power Failure; and
  - (e) Paragraph B.1.e, War and Military Action.

(2) Contractual Liability

We will not defend any claim or "suit," or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement.

(3) Nuclear Hazard

We will not defend any claim or "suit," or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. LIMITATION

We will not pay for loss of or damage to exterior masonry veneer (except stucco) on wood frame walls caused by or resulting from Earthquake or Volcanic Eruption. The value of such veneer will not be included in the value of Covered Property or the amount of loss when applying:

1. The Deductible applicable to this form; or
2. The Additional Condition, Coinsurance, applicable to this Coverage Part.

This limitation does not apply if:

- a. The premises description in the Declarations specifically states "Including Masonry Veneer"; or
- b. Less than 10% of the total outside wall area is faced with masonry veneer (excluding stucco).

D. DEDUCTIBLE

1. The following is applicable to all Coverage Forms except:
  - (1) Business Income (And Extra Expense) Coverage Form;
  - (2) Business Income (Without Extra Expense) Coverage Form;
  - (3) Extra Expense Coverage Form.

The Deductible, if any, in this Coverage Part is replaced by the following with respect to Earthquake and Volcanic Eruption;

We will subtract a sum from the amount of loss or damage in any one occurrence.

a. The sum we subtract from each separate item will be a percentage of its value. The applicable percentage is shown in the Declarations.

b. This Deductible applies separately to the following:

- (1) Each building or structure;
- (2) The contents of each building or structure; and

(3) Personal property in the open.

Example:

When: The value of the property is \$100,000

The Earthquake Deductible is 5%  
The amount of loss is \$20,000

Step (a):  $\$100,000 \times 5\% = \$5,000$

Step (b):  $\$20,000 - \$5,000 = \$15,000$

The most we will pay is \$15,000. The remaining \$5,000 is not covered because of the Deductible.

2. Applicable to the following Coverage Forms:

- (1) Business Income (And Extra Expense) Coverage Form;
- (2) Business Income (Without Extra Expense) Coverage Form;
- (3) Extra Expense Coverage Form

We will only pay for loss you sustain after the first 168 hours after direct physical loss or damage caused by or resulting from Earthquake or Volcanic Eruption.

This Deductible is applicable only to buildings over 4 stories in height.

INSURANCE RESERVE FUND

By *Anne Macdon Smith*  
Director



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

## CAUSES OF LOSS - SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F - Definitions.

### A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations; that follow.

### B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if earth movement results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.
- (2) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter or;
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

#### d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused. But if nuclear reaction or radiation, or radioactive contamination results in fire, we will pay for the loss or damage caused by that fire.

#### e. Utility Services

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to the Extra Expense coverage. Instead, the Special Exclusion in paragraph B.4.a.(1) applies to these coverages.

#### f. War and Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors, or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and Tear;
  - (2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - (3) Smog;
  - (4) Settling, cracking, shrinking or expansion;
  - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
  - (6) Mechanical breakdown, including rupture or bursting caused by a centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
  - (7) The following causes of loss to personal property:
    - (a) Dampness or dryness of atmosphere;
    - (b) Changes in or extremes of temperature; or
    - (c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d. (1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- f. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing; unless:

- (1) You do your best to maintain heat in the building or structure; or

- (2) You drain the equipment and shut off the supply if the heat is not maintained.

- h. Dishonest or criminal act by you, any of your partners, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or

- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to the acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense
- j. Rains, snow, ice or sleet to personal property in the open.
- k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.
- l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

#### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. **Business Income (And Extra Expense) Coverage Form. Business Income (Without Extra Expense) Coverage Form or Extra Expense Coverage Form**

We will not pay for:

(1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.

(2) Any loss caused by or resulting from:

(a) Damage or destruction of "finished stock"; or

(b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

(3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

(4) Any increase of loss caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations",

due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affect your Business Income during the "period of restoration".

(5) Any Extra Expense caused by or resulting from suspension, lapse, cancellation of any license, lease or contract beyond the "period of restoration".

(6) Any other consequential loss

#### b. Leasehold Interest Coverage Form

(1) Paragraph B.1.a. Ordinance or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

(a) Your canceling the lease;

(b) The suspension, lapse or cancellation of any license; or

(c) Any other consequential loss.

#### c. Legal Liability Coverage Form

(1) The following Exclusions do not apply to insurance under this Coverage Form.

(a) Paragraph B.1.a., Ordinance or Law;

(b) Paragraph B.1.c., Governmental Action;

(c) Paragraph B.1.d., Nuclear Hazard;

(d) Paragraph B.1.e., Utility Services; and

(e) Paragraph B.1.f., War and Military Action

(2) The following additional exclusions apply to insurance under this Coverage Form:

##### (a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

(i) Your assumption of liability was executed prior to the accident; and

(ii) The building is Covered Property under this Coverage Form.

##### (b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense, or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

### C. LIMITATIONS

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flue or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
  - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

    - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
    - (2) Business Income coverage or Extra Expense coverage.
  - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, other instances where there is no physical evidence to show what happened to the property.
  - f. Gutters and downspouts caused by or resulting from weight of snow, ice or sleet.
  - g. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage.
  - a. Valuable papers and records, such as books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell or other data processing, recording or storage media, and other records.

- b. Animals, and then only if they are killed or their destruction is made necessary.

- c. Fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:

- (1) Glass that is part of a building or structure;
- (2) Containers of property held for sale; or
- (3) Photographic or scientific instrument lenses.

- d. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 1,000 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
- (2) To Business Income coverage or to Extra Expense Coverage.

3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence.

The special limits are:

- a. \$2,500 for furs, fur garments and garments trimmed with fur.
- b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c. \$2,500 for patterns, dies, mold, and forms.
- d. \$2,500 for stamps, tickets, including lottery tickets held for sale and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

#### D. ADDITIONAL COVERAGE - COLLAPSE

The term Covered Cause of Loss includes the Additional Coverage - Collapse as described and limited in D.1. through D.5. below.

1. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building insured under this Coverage Form, if the collapse is caused by one or more of the following:
  - a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
  - b. Hidden decay;
  - c. Hidden insect or vermin damage;
  - d. Weight of people or personal property;
  - e. Weight of rain that collects on a roof;
  - f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in D.1.a. through D.1.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.
2. If the direct physical loss or damage does not involve collapse of a building or any part of a building, we will pay for loss or damage to Covered Property caused by the collapse of personal property only if:
  - a. The personal property, which collapses, is inside a building; and
  - b. The collapse was caused by a cause of loss listed in D.1.a through D.1.f. above.
3. With respect to the following property:
  - a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
  - b. Awnings, gutters and downspouts;
  - c. Yard fixtures;
  - d. Outdoor swimming pools;
  - e. Fences;
  - f. Piers, wharves and docks;
  - g. Beach or diving platforms or appurtenances;
  - h. Retaining walls; and
  - i. Walks roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in D.1.b through D.1.f., we will pay for loss or damage to that property only if:

- a. Such or loss damage is a direct result of the collapse of a building insured under this Coverage Form; and
  - b. The property is Covered Property under this Coverage Form.
4. Collapse does not include settling, cracking, shrinkage, bulging or expansion.
  5. This Additional Coverage - Collapse, will not increase the Limits of Insurance provided in the Coverage Part.

#### E. ADDITIONAL COVERAGE EXTENSIONS

1. **Property in Translt.** This extension applies only to your personal property to which this form applies.
  - a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody and control of your salespersons) in transit more than 1,000 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
  - b. Loss or damage must be caused by or result from one of the following causes of loss:
    - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
    - (2) Vehicle collisions upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed
    - (3) Theft of an entire bale, case or package by forced entry into a secure locked body or compartment of the vehicle. There must be physical marks of the forced entry.
  - c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. **Water Damage, Other Liquids, Powder or Molten Material Damage.** If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

#### F. DEFINITIONS

"Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

1. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
  - a. The cost of filling sinkholes; or
  - b. Sinking or collapse of land into man made underground cavities

2. Falling objects does not include loss or damage to:

- a. Personal property in the open; or
- b. The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

3. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

INSURANCE RESERVE FUND

By 

Director



**STATE FISCAL ACCOUNTABILITY AUTHORITY**

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
F110000016	07/01/2015	07/01/2016		BUILDING AND PERSONAL PROPERTY	01 JUL 2015

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-02 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-27

NAMED INSURED AND ADDRESS	CONTACT PERSON AND PHONE	FORM #	PAGE
AGENCY NAME 1	AGENCY CONTACT NAME	PD-02	1 OF 2
AGENCY NAME 2	(803) 737-0020		
AGENCY ADDRESS	TYPE OF ACTIVITY		ACTIVITY #
CITY, ST ZIPCODE	ENDORSEMENT LOSS PAYABLE CLAUSE		002

EFFECTIVE DATE - 07/01/2015

NAME AND ADDRESS OF LOSS PAYEE: 0001

THIRD PARTY NAME  
THIRD PARTY ADDRESS  
CITY, STATE ZIPCODE

LOSS, IF ANY UNDER THIS POLICY SHALL BE PAYABLE TO ABOVE NAMED LOSS PAYEE AS ITS INTEREST MAY APPEAR. IT IS UNDERSTOOD THAT THE LOSS PAYEE NOW HAS OR WILL ACQUIRE FROM TIME TO TIME AN INSURABLE INTEREST IN THE PROPERTY LISTED BELOW AND INSURED UNDER THIS POLICY AS ESTABLISHED BY WAREHOUSE RECEIPTS, BILLS OF LADING, DOCUMENTARY OR OTHER WRITTEN EVIDENCE.

THIS INSURANCE, SOLELY AS TO THE INTEREST THEREIN OF THE LOSS PAYEE, SHALL NOT BE IMPAIRED OR INVALIDATED BY ANY ACT OR NEGLECT OF THE NAMED INSURED OF THE WITHIN DESCRIBED PROPERTY EXCEPT AS PROVIDED IN THE LAST PARAGRAPH HEREOF, NOR BY ANY CHANGE IN THE TITLE OR OWNERSHIP OF THE PROPERTY, NOR BY THE OCCUPATION OF THE PREMISES WHEREIN SUCH PROPERTY IS LOCATED FOR PURPOSES MORE HAZARDOUS THAN ARE PERMITTED BY THIS POLICY; PROVIDED THAT IN CASE THE NAMED INSURED SHALL NEGLECT TO PAY ANY PREMIUM DUE UNDER THIS POLICY, THE LOSS PAYEE SHALL, ON DEMAND, PAY THE SAME.

PROVIDED, ALSO, THAT THE LOSS PAYEE SHALL NOTIFY THIS FUND OF ANY CHANGE OF OWNERSHIP OR OCCUPANCY OR INCREASE IN HAZARD WHICH SHALL COME TO THE KNOWLEDGE OF SAID LOSS PAYEE, AND UNLESS PERMITTED BY THIS POLICY, IT SHALL BE NOTED THEREON AND THE LOSS PAYEE SHALL, ON DEMAND, PAY THE PREMIUM FOR SUCH INCREASED HAZARD FOR THE TERM OF THE USE THEREOF; OTHERWISE THIS POLICY SHALL BE NULL AND VOID.

THIS FUND RESERVES THE RIGHT TO CANCEL THIS POLICY AT ANYTIME AS PROVIDED BY ITS TERMS, BUT IN SUCH CASE THIS POLICY SHALL CONTINUE IN FORCE FOR THE BENEFIT ONLY OF THE LOSS PAYEE FOR THIRTY (30) DAYS AFTER NOTICE TO THE LOSS PAYEE OF SUCH CANCELLATION AND SHALL THEN CEASE, AND THIS FUND SHALL HAVE THE RIGHT ON LIKE NOTICE, TO CANCEL THIS AGREEMENT.

CONTINUED ON PAGE 2...



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
F110000016	07/01/2015	07/01/2016		BUILDING AND PERSONAL PROPERTY	01 JUL 2015

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-02 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-27

NAMED INSURED AND ADDRESS	CONTACT PERSON AND PHONE	FORM #	PAGE
AGENCY NAME 1	AGENCY CONTACT NAME	PD-02	2 OF 2
AGENCY NAME 2	(803) 737-0020		
AGENCY ADDRESS	TYPE OF ACTIVITY		ACTIVITY #
CITY, ST ZIPCODE	ENDORSEMENT LOSS PAYABLE CLAUSE		002

WHENEVER THIS FUND SHALL PAY THE LOSS PAYEE ANY SUM FOR LOSS OR DAMAGE UNDER THIS POLICY AND SHALL CLAIM THAT, AS TO THE NAMED INSURED, NO LIABILITY THEREFOR EXISTED, THIS FUND SHALL, TO THE EXTENT OF SUCH PAYMENT, BE THEREUPON LEGALLY SUBROGATED TO ALL THE RIGHTS OF THE PARTY TO WHOM SUCH PAYMENT SHALL BE MADE, UNDER ALL SECURITIES HELD AS COLLATERAL TO THE DEBT WITH INTEREST, AND SHALL THEREUPON RECEIVE A FULL ASSIGNMENT AND TRANSFER OF THE DEBT AND OF THE MORTGAGE AND OF ALL SUCH OTHER SECURITIES OF THE INTEREST OF THE LOSS PAYEE IN THE WITHIN DESCRIBED PROPERTY; BUT NO SUBROGATION SHALL IMPAIR THE RIGHT OF THE LOSS PAYEE TO RECOVER THE FULL AMOUNT OF ITS CLAIM AGAINST THE BORROWER, MORTGAGOR OR OWNER.

ALL THE OTHER TERMS AND CONDITIONS OF THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED AND OF WHICH IT IS A PART, REMAIN UNCHANGED, WHICH OTHER TERMS AND CONDITIONS INCLUDE THE LIMIT(S) OF LIABILITY NAMED IN THE POLICY AND THE CONDITIONS OF ANY VALUE REPORTING, FULL REPORTING, TOTAL INSURANCE OR CO-INSURANCE CLAUSES INCORPORATED THEREIN OR ATTACHED THERETO.

## PROPERTY COVERED:

SEGMENT NUMBER	PROPERTY DESCRIPTION	PROPERTY LOCATION	INSURED VALUE
10	ADMINISTRATIVE OFFICE/COLUMBIA 1 MAIN STREET COPIER		20,000

THIS ENDORSEMENT SHOULD BE ATTACHED TO AND BECOME PART OF POLICY F110000016

JULY 01, 2015

DATE

ANNE MACON SMITH  
Director

**STATE FISCAL ACCOUNTABILITY AUTHORITY**

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER F110000016	FROM 07/01/2015	TO 07/01/2016	TYPE OF INSURANCE BUILDING AND PERSONAL PROPERTY	DATE PRINTED 01 JUL 2015
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COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-02 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-16 PD-27

NAMED INSURED AND ADDRESS AGENCY NAME 1 AGENCY NAME 2 AGENCY ADDRESS CITY, ST ZIPCODE	CONTACT PERSON AND PHONE AGENCY CONTACT NAME (803) 737-0020 TYPE OF ACTIVITY ENDORSEMENT MORTGAGE CLAUSE	FORM # PD-16	PAGE 1 OF 2 ACTIVITY # 003
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EFFECTIVE DATE - 07/01/2015

NAME AND ADDRESS OF MORTGAGEE (OR TRUSTEE): 0002

THIRD PARTY NAME  
THIRD PARTY ADDRESS  
CITY, STATE ZIPCODE

(APPLIES ONLY TO BUILDING ITEMS AND IS EFFECTIVE ONLY WHEN POLICY IS MADE  
PAYABLE TO A NAMED MORTGAGEE OR TRUSTEE.)

LOSS OR DAMAGE, IF ANY, UNDER THIS POLICY, SHALL BE PAYABLE TO THE MORTGAGEE (OR TRUSTEE) NAMED ABOVE, AS INTEREST MAY APPEAR, UNDER ALL PRESENT OR FUTURE MORTGAGES UPON THE PROPERTY HEREIN DESCRIBED IN WHICH THE AFFORESAID MAY HAVE AN INTEREST AS MORTGAGEE (OR TRUSTEE) IN ORDER OF PRECEDENCE OF SAID MORTGAGES, AND THIS INSURANCE, AS TO THE INTEREST OF THE MORTGAGEE (OR TRUSTEE) ONLY THEREIN, SHALL NOT BE INVALIDATED BY ANY ACT OR NEGLECT OF THE MORTGAGOR OR OWNER OF THE WITHIN DESCRIBED PROPERTY, NOR BY ANY FORECLOSURE OR OTHER PROCEEDINGS OR NOTICE OF SALE RELATING TO PROPERTY, NOR BY ANY CHANGE IN THE TITLE OF OWNERSHIP OF THE PROPERTY, NOR BY THE OCCUPATION OF THE PREMISES FOR PURPOSES MORE HAZARDOUS THAN ARE PERMITTED BY THIS POLICY; PROVIDED, THAT IN CASE THE MORTGAGOR OR OWNER SHALL NEGLECT TO PAY ANY PREMIUM DUE UNDER THIS POLICY, THE MORTGAGEE (OR TRUSTEE) SHALL, ON DEMAND, PAY THE SAME.

PROVIDED, ALSO, THAT THE MORTGAGEE (OR TRUSTEE) SHALL NOTIFY THIS FUND OF ANY CHANGE OF OWNERSHIP OR OCCUPANCY OR INCREASE OF HAZARD WHICH SHALL COME TO THE KNOWLEDGE OF SAID MORTGAGEE (OR TRUSTEE) AND, UNLESS PERMITTED BY THIS POLICY, IT SHALL BE NOTED THEREON AND THE MORTGAGEE (OR TRUSTEE) SHALL, ON DEMAND, PAY THE PREMIUM FOR SUCH INCREASED HAZARD FOR THE TERM OF USE THERE-OF; OTHERWISE THIS POLICY SHALL BE NULL AND VOID.

THIS FUND RESERVES THE RIGHT TO CANCEL THIS POLICY AT ANY TIME AS PROVIDED BY ITS TERMS, BUT IN SUCH CASE THIS POLICY SHALL CONTINUE IN FORCE FOR THE BENEFIT ONLY OF THE MORTGAGEE (OR TRUSTEE) FOR 10 DAYS AFTER NOTICE TO THE MORTGAGEE (OR TRUSTEE) OF SUCH CANCELLATION AND SHALL THEN CEASE, AND THIS FUND SHALL HAVE THE RIGHT, ON LIKE NOTICE, TO CANCEL THIS AGREEMENT.

CONTINUED ON PAGE 2...



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER	FROM	POLICY PERIOD	TO	TYPE OF INSURANCE	DATE PRINTED
F110000016	07/01/2015	07/01/2016		BUILDING AND PERSONAL PROPERTY	01 JUL 2015

COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-02 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-16 PD-27

NAMED INSURED AND ADDRESS	CONTACT PERSON AND PHONE	FORM #	PAGE
AGENCY NAME 1	AGENCY CONTACT NAME	PD-16	2 OF 2
AGENCY NAME 2	(803) 737-0020		
AGENCY ADDRESS	TYPE OF ACTIVITY		ACTIVITY #
CITY, ST ZIPCODE	ENDORSEMENT MORTGAGE CLAUSE		003

EFFECTIVE DATE - 07/01/2015

WHENEVER THIS FUND SHALL PAY THE MORTGAGEE (OR TRUSTEE) ANY SUM FOR LOSS UNDER THIS POLICY AND SHALL CLAIM THAT, AS TO THE MORTGAGOR OR OWNER, NO LIABILITY THEREFORE EXISTED, THIS FUND SHALL, TO THE EXTENT OF SUCH PAYMENT, BE THEREUPON LEGALLY SUBROGATED TO ALL THE RIGHTS OF THE PARTY TO WHOM SUCH PAYMENT SHALL BE MADE, UNDER ALL SECURITIES HELD AS COLLATERAL TO THE MORTGAGE DEBT, OR MAY, AS ITS OPTION, PAY TO THE MORTGAGEE (OR TRUSTEE) THE WHOLE PRINCIPAL DUE OR TO GROW DUE ON THE MORTGAGE WITH INTEREST, AND SHALL THEREUPON RECEIVE A FULL ASSIGNMENT AND TRANSFER OF THE MORTGAGE AND OF ALL SUCH OTHER SECURITIES; BUT NO SUBROGATION SHALL IMPAIR THE RIGHT OF THE MORTGAGEE (OR TRUSTEE) TO RECOVER THE FULL AMOUNT OF SAID MORTGAGEE'S (OR TRUSTEE'S) CLAIM.

THE PROPERTY LISTED BELOW HAS BEEN ADDED TO THE ABOVE MORTGAGEE (OR TRUSTEE):

SEG/PROP NUMBER	PROPERTY DESCRIPTION	PROPERTY LOCATION	INSURED VALUE
10	ADMINISTRATIVE OFFICE/COLUMBIA	1 MAIN STREET	
	OFFICE BUILDING	1 MAIN ST	500,000

THIS ENDORSEMENT SHOULD BE ATTACHED TO AND BECOME PART OF POLICY F110000016

JULY 01, 2015

DATE

ANNE MACON SMITH  
Director



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

POLICY NUMBER F110000016	POLICY PERIOD FROM 07/01/2015 TO 07/01/2016	TYPE OF INSURANCE BUILDING AND PERSONAL PROPERTY	DATE PRINTED 01 JUL 2015
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COVERAGE PROVIDED UNDER THIS POLICY PART IS SUBJECT TO THE FOLLOWING FORMS:

PD-01 PD-02 PD-03 PD-04 PD-05 PD-08 PD-09 PD-10 PD-11 PD-12 PD-15 PD-16 PD-27 PD-33

NAMED INSURED AND ADDRESS

AGENCY NAME 1

AGENCY NAME 2

AGENCY ADDRESS

CITY, ST ZIPCODE

CONTACT PERSON AND PHONE

AGENCY CONTACT NAME

(803) 737-0020

TYPE OF ACTIVITY

ENDORSEMENT CERTIFICATE OF INSURANCE

FORM #

PD-33

PAGE

1 OF 2

ACTIVITY #

004

EFFECTIVE DATE - 07/01/2015

NAME AND ADDRESS OF CERTIFICATE HOLDER: 0003

THIRD PARTY NAME

THIRD PARTY ADDRESS

CITY, ST ZIPCODE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW.

THIS IS TO CERTIFY THAT A POLICY HAS BEEN ISSUED TO THE ABOVE NAMED INSURED AND IS IN FORCE AT THIS TIME. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THIS POLICY DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF THIS POLICY.

CANCELLATION: SHOULD THIS POLICY BE CANCELLED BEFORE EXPIRATION DATE THEREOF THE INSURANCE RESERVE FUND WILL ENDEAVOR TO PROVIDE 30 DAYS WRITTEN NOTICE TO ABOVE NAMED CERTIFICATE HOLDER, BUT FAILURE TO PROVIDE SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY.

THE PROPERTY LISTED BELOW HAS BEEN ADDED TO THE ABOVE CERTIFICATE HOLDER:

SEG/PROP  
NUMBER

PROPERTY DESCRIPTION

PROPERTY LOCATION

INSURED  
VALUE

10

ADMINISTRATIVE OFFICE/COLUMBIA 1 MAIN STREET

1,000,000

THIS ENDORSEMENT SHOULD BE ATTACHED TO AND BECOME PART OF POLICY F110000016

JULY 01, 2015

DATE

ANNE MACON SMITH  
Director



## STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

### FLOOD INSURANCE POLICY

IN CONSIDERATION OF THE PAYMENT OF THE PREMIUM, IN RELIANCE UPON THE STATEMENTS IN THE APPLICATION AND DECLARATIONS FROM MADE APART HEREOF AND SUBJECT TO ALL THE TERMS OF THIS POLICY, THE FUND DOES INSURE the Insured and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance of any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest if the insured, against all DIRECT LOSS BY "FLOOD" as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto, or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flood," but not elsewhere.

Assignment of this policy by the Insured is not allowed.

#### PERSONS INSURED

- A. The named Insured and legal representatives.
- B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

#### DEFINITIONS

##### DEFINITIONS - AS USED IN THIS POLICY:

"Actual Cash Value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by the Insured, or the Insured's agent, and given the information on the basis of which the Insured determines accessibility of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, including a walled or roofed building in the course of construction, alteration or repair and a mobile home on a foundation, subject to Paragraph "H" of the provision titled "Property Not Covered."

"Cancellation" means that ending of the Insurance coverage provided by this policy prior to the expiration date.

"Coastal High Hazard Area" means an area subject to high velocity waters including hurricane wave wash and tsunamis.

"Declarations Page" is a computer generated summary of information furnished by the Insured in the application for Insurance.

"Doublewide Mobile Home" means a building which is fully anchored and affixed to its permanent site, and which is designed and constructed as a modular or manufactured building and which has axles and wheels used solely for transportation to the lot or construction site where it is to be assembled as a nonmovable, permanent building; such a building is not considered to be a mobile home for purposes of this policy.

"Direct Physical Loss By Flood" means any loss in the nature of actual loss physical damage, evidenced by physical changes, to the insured property (building or personal property contents) which is directly and proximately caused by a "Flood" (as defined in this Agreement), while the Insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for forty-five days, at another place above ground level or outside of the special flood hazard area to which any of the property shall necessarily be

removed in order to protect and preserve it from a flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss). The term "Direct Physical Loss by Flood" shall not include compensation for loss of use, loss of access, loss of profits or loss resulting from interruption of business, profession or manufacture, allowance for any increased cost of repair or reconstruction as a result of any ordinance or repair regulating reconstruction or repair, or other economic loss. (This enumeration is not exclusive).

"Expiration Date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"FLOOD": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.
3. Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in subparagraph A-2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A-1 above.

"Walled and Roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

#### PERILS EXCLUDED

##### THE FUND SHALL NOT BE LIABLE FOR LOSS:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water, except where the property covered has been simultaneously damaged by flood; (3) water, moisture or mudslide (i.e. mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the Insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties

immediately adjacent thereto; or (4) seepage, backup of water, or hydrostatic pressure not related to a condition of [flood] as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By theft or by fire, windstorm, explosion, earthquake, landslide or any other earth movement except such mudslide or erosion as is covered under the peril of flood;

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located, caused by the peril insured against;

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save and preserve the property at the time of and after an occurrence of the peril insured against by this policy; but, for contents covered herein and subject to the terms of the policy including the limits of liability, the Fund will reimburse the Insured for reasonable expenses necessarily incurred by him in complying with the requirements of this paragraph, including but not limited to, reasonable expenses for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood;

G. Caused intentionally by the Insured;

H. Which is already in progress as of 12:01 a.m. of the first day of the policy term;

I. From a flood which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the insured premises;

J. Caused by any modification by the Insured to the insured property of the described premises on which the insured property is located which materially increases the risk of flooding.

#### PROPERTY COVERED

A. **BUILDING:** When the insurance under this policy covers a building, such insurance shall include additions and extensions attached thereto; permanent fixtures, machinery and equipment forming a part of and pertaining to the service of the building; personal property of the Insured as landlord used for the maintenance or service of the building including fire extinguishing apparatus, floor coverings, refrigerating and ventilating equipment, all while within the described building; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction, alteration or repair of such building or appurtenant private structures on the described premises.

B. **CONTENTS:** When the insurance under this policy covers contents, coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this policy covers other than household contents, such insurance shall cover merchandise and stock, materials and stock supplies of every description; furniture,

fixture, machinery and equipment of every description all owned by the Insured; improvements and betterments (as hereinafter defined) to the building if the Insured is not the owner of the building and when not otherwise covered; all while within the described enclosed building.

2. When the insurance under this policy covers household contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a resident - except animals, birds, fish, business property, other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by other insurance including the peril insured against in this policy; belonging to the Insured or members of the Insured's family of the same household, or for which the insured may be liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within the described building.

The Insured, if not the owner of the described building, may apply up to 10% of the amount of insurance applicable to the household contents covered under this item, not as an additional amount of insurance, to cover loss to improvements and betterments (as hereinafter defined) to the described building.

The Insured, if an individual condominium unit owner in the described building, may apply up to 10% of the amount of insurance on contents covered under this policy, not as an additional amount of insurance, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a condominium association policy on the described building.

#### THE FUND SHALL NOT BE LIABLE FOR LOSS IN ANY ONE OCCURRENCE FOR MORE THAN:

- (a) \$250.00 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glass or bric-a-brac);
- (b) \$250.00 in the aggregate on jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver or platinum and furs or any article containing fur which represents its principal value.

3. When the insurance under this policy covers improvements and betterments, such insurance shall cover the Insured's used interest in improvements and betterments to the described building.

- (a) The term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, but which are not legally subject to removal by the Insured.
- (b) The word [lease] wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.
- (c) In the event improvements and betterments are damaged or destroyed during the term of this policy by the peril insured against, the liability of the Fund shall be determined as follows:
  - (1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the actual cash value of the damaged or destroyed improvements and betterments.
  - (2) If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease.



- (3) If repaired or replaced at the expense of others for the use of the insured, there shall be no liability hereunder.

**C. DEBRIS REMOVAL:** This insurance covers expense incurred in the removal of debris of or on the building or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

#### PROPERTY NOT COVERED

##### THIS POLICY SHALL NOT COVER

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records.

B. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boathouses or other similar structures or buildings into which boats are floated; or personal property in the open, unless specifically insured and a premium charged therefore.

C. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, driveways and other paved or poured surfaces outside the foundation walls of the building, unless specifically insured and a premium charged therefore.

D. Aircraft, any self propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment.

E. On and after June 1, 1982 with respect to any building located outside of a coastal high hazard area, solid, non-load bearing walls, open, wood constructed lattice (breakaway) walls, insect screening or other (breakaway) walls any personal property or other contents, and machinery or equipment servicing the building when any of the foregoing items:

- (i) Are not contained within the foundation walls of the described building (except for machinery and equipment servicing the building); or
- (ii) Are in the open (except for machinery and equipment servicing the building); or
- (iii) Are contained below the lowest floor used for rating the building order to calculate the premium amount to be paid for this policy; or
- (iv) In case of a building rated with Emergency Program or PreFIRM rates, were placed in the areas described in (i) or (ii) or (iii) above, on or after June 1, 1982.

The terms, "machinery or equipment," for purposes of this paragraph "E", include, but are not limited to, heating equipment, water heaters, air conditioning equipment and air ducts.

F. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

G. On and after October 1, 1982, a mobile home located with a FEMA designated Special Flood Hazard Area that is not affixed

to a permanent site (anchored) to resist flotation, collapse or lateral movement by providing over-the-top frame ties to ground anchors or that otherwise meet the community's flood plan management requirements.

H. Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage building including their contents, may be insured even though they may be of container-type construction), unless specifically insured and a premium charged therefore.

I. A mobile home and its contents located with a FEMA designated coastal high hazard area (Zones V1-V30 on a FEMA Flood Insurance Rate Map) which is not located in a mobile home park or subdivision in existence and open for business prior to June 1, 1982.

#### DEDUCTIBLES

A. With respect to loss to the building, appurtenant structures, and debris removal covered hereunder, the Fund shall be liable for only that portion of the loss in any one occurrence which is in excess of the deductible shown on the declaration page.

B. With respect to loss to contents or debris removal covered hereunder or to expenses, incurred under paragraph "F" of "Perils Excluded," the Fund shall be liable for only that portion of the loss in any one occurrence which is in excess of the deductible shown on the declaration page.

C. In the case of reasonable expenses incurred in the removal of an insured mobile home or personal property from the insured premises away from the peril of flood, the amount of the deductible shall be the amount shown on the declaration page.

#### GENERAL CONDITIONS AND PROVISIONS

A. **PAIR AND SET CLAUSE:** If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. **CONCEALMENT FRAUD:** This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

C. **OTHER INSURANCE:** The Fund shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the Fund upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. **ADDED AND WAIVER PROVISIONS:** The extent of the application of insurance under this policy and of the contribution



to be made by the Fund in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Fund relating to appraisal or to any examination provided to herein.

#### **E. VOIDANCE, REDUCTION OR REFORMATION OF THE COVERAGE:**

1. **VOIDANCE:** This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:
  - a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;
  - b. The Insured or the insured's agent has (i) sworn falsely or (ii) fraudulently or willfully concealed misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premium, if any, shall be subject to offsets for the Fund's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy;

**F. CONDITIONS SUSPENDING OR RESTRICTING INSURANCE:** Unless otherwise provided in writing added hereto, the Fund shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the Insured), when such act or neglect is not within the control of the Insured.

**G. ALTERATIONS AND REPAIRS:** Permission is granted to make alterations, additions and repairs, and to complete structures in course of construction. In the event of loss hereunder, the Insured is permitted to make reasonable repairs, temporary or permanent, provided such repairs are confined solely to the protection of the property from further damage and provided further that the Insured shall keep an accurate record of such repair expenditures. The cost of any such repairs directly attributable to damage by the peril insured against shall be included in determining the amount of loss hereunder. Nothing herein contained is intended to modify the policy requirements applicable in case loss occurs, and in particular the requirement that in case loss occurs the Insured shall protect the property from further damage.

**H. PROPERTY OF OTHERS (SERVANTS AND GUESTS ONLY):** Unless otherwise provided in writing hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insured. Any such insurance under this policy shall not insure directly or indirectly to the benefit of any carrier or other bailee for hire.

**I. LOSS CLAUSE:** Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

**J. MORTGAGE CLAUSE (APPLICABLE TO BUILDING ITEMS ONLY AND EFFECTIVE ONLY WHEN POLICY IS MADE PAYABLE TO A MORTGAGEE (OR TRUSTEE) NAMED IN THE APPLICATION AND DECLARATIONS FORM ATTACHED TO THIS POLICY):**

Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee,) in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings, or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify this Fund of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Fund, it shall continue in force for the benefit only of the mortgagee (or trustee) for 10 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Fund shall have the right, on like notice, to cancel this agreement.

Whenever the Insured shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefore existed, the Fund shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

**K. MORTGAGEE OBLIGATIONS:** If the Insured fails to render proof of loss, the name mortgagee (or trustee), upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

**L. LOSS PAYABLE CLAUSE (APPLICABLE TO CONTENTS ITEMS ONLY):** Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

**M. REQUIREMENTS IN CASE OF LOSS:** The Insured shall give written notice, as soon as practicable, to the Fund of any loss, protect the property from further damage, forthwith separate the damages and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Fund, the Insured shall render to the Fund a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Fund, may be required to furnish a complete inventory of the destroyed, damages, and undamaged property, showing in detail quantities, cost actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Fund all that remains of any property herein described, and submit to examinations under oath by any person named by the Fund, and subscribe

the same, and, as often as may be reasonably required, shall produce for examination all book of account, bills, invoices and other vouchers or certified copied thereof if originals be lost, at such reasonable time and place as may be designated by the Insured or its representative, and shall permit extracts and copies thereof to be made.

**N. APPRAISAL:** In case the Insured and the Fund shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid the parties equally.

**O. OPTIONS:** It shall be optional with the Fund to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or

damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required

**P. ABANDONMENT:** There shall be no abandonment to the Fund of any property.

**Q. WHEN LOSS PAYABLE:** The amount of loss for which the Insurer may be liable shall be payable 60 days after proof of loss, as herein provided, is received by the Insurer and ascertainment of the loss is made either by agreement between the Insured and the Fund expressed in writing or by the filing with the fund of an award as herein provided.

**R. ACTION AGAINST THE FUND:** No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim.

**S. SUBROGATION:** In the event of any payment under this policy, the Fund shall be subrogated to all the Insured's rights of recovery therefore against any party, and the Fund may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefore is made by the Fund. The Insured shall do nothing after loss to prejudice such right.

INSURANCE RESERVE FUND

By



Director



# STATE FISCAL ACCOUNTABILITY AUTHORITY

INSURANCE RESERVE FUND  
POST OFFICE BOX 11066  
COLUMBIA, SOUTH CAROLINA 29211

Phone: (803) 737-0020

## SOUTH CAROLINA CHANGES - VALUATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
BUILDERS RISK COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
STANDARD PROPERTY POLICY

### SCHEDULE \*

Prem. No.	Bldg. No.	Agreed Value of Buildings	Total Amount of Insurance to be Carried
--------------	--------------	---------------------------	--

- A. When this endorsement is attached to the STANDARD PROPERTY POLICY PD 04 01 the term Coverage Part in this endorsement is replaced by the term Policy.
- B. The following is added to VALUATION Loss Condition:
1. For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:
    - a. The value of the buildings described in this Coverage Part; and
    - b. The total amount of insurance to be carried on the buildings, including this Coverage Part; are the amounts shown in the Schedule.
  2. The following applies to the Builders' Risk Coverage Form, or the Builders' Risk Changes - Standard Property Policy, if applicable:

The Agreed Value of Buildings represents the value of the building when it is completed.

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

INSURANCE RESERVE FUND

By

Director

## **Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 2:20 PM  
**To:** Clark, Brad; Robbie Ferris (RFerris@sfla.biz)  
**Subject:** RE: HCS | Exhibit B

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'm talking to them about a lot of last minute edits this afternoon and will include the builder-provided BR policy as a topic on the list. The terms provide for FFEP to place coverages after execution so we have a few days, although of course next week is truncated for business purposes.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Clark, Brad [mailto:Brad.Clark@BBandT.com]  
**Sent:** Wednesday, November 18, 2015 2:17 PM  
**To:** Keith R. Powell; Robbie Ferris (RFerris@sfla.biz)  
**Subject:** RE: HCS | Exhibit B

Thank you Keith.

I will review the coverage and inform Robbie / Firstfloor Energy Positive LLC ("FFEP") of any concerns.

If you would like, I will pursue a Builder's Risk coverage option in the voluntary marketplace that will list HCS, FFEP, and subcontractors as named insureds. HCS can compare this to the premium and coverage available through the IRF.

Do you know what wind/named storm deductible the IRF uses?

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 18, 2015 12:56 PM  
**To:** Clark, Brad; Robbie Ferris ([RFerris@sfla.biz](mailto:RFerris@sfla.biz))  
**Subject:** FW: HCS | Exhibit B  
**Importance:** High

Attached info for your use.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 12:40 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS | Exhibit B

Mr. Powell,

Sorry for the delay. In a mtg this morning and dr's appt right after. Let me know if you need anything else.

Regards,  
*Ara*

Ara Heinz | Procurement Services | 霍P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Tuesday, November 17, 2015 6:39 PM  
**To:** Ara Heinz  
**Subject:** Fwd: HCS | Exhibit B

Ara - can you get your irf policy to me? I know you sent two excerpts in the summer but the insurance agent for ffep needs to see it all. Thanks.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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Begin forwarded message:

**From:** "Clark, Brad" <[Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com)>  
**Date:** November 17, 2015 at 5:30:59 PM EST  
**To:** "Keith R. Powell" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Subject:** RE: HCS | Exhibit B

Keith,

Can you please send me the Causes of Loss Form referenced in the Builders Risk Coverage Form and all applicable endorsements/exclusions? I would like to review the excluded perils as the policy wording in the attachments you send provides very limited coverage for the exposure.

Thank you,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** November 17, 2015 1:22 PM  
**To:** Robbie Ferris  
**Cc:** Clark, Brad  
**Subject:** RE: HCS | Exhibit B

Here are the forms. The BR policy talks about "your" property, but the IRF won't let HCS name a nongovernment entity as an insured or loss payee.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Tuesday, November 17, 2015 12:22 PM  
**To:** Keith R. Powell  
**Cc:** Clark, Brad ([Brad.Clark@BBandT.com](mailto:Brad.Clark@BBandT.com))  
**Subject:** FW: HCS | Exhibit B

Keith,  
Apparently our insurance company sent me an email about this a few days ago that I never sent you. Sorry!!  
Feel free to call Brad directly to discuss his concerns.  
Robbie

Robbie/Mike,

After reviewing this updated draft, I still see the same potential problem areas as previously outlined. There are some significant gaps in the protection of First Floor and subcontractors with the language used for Builder's Risk coverage, specifically:

- Design-Builder and subcontractors of all tiers should have insured status on the Builder's Risk policy in order to ensure your interests are protected.
- HCS should agree to waive subrogation against First Floor and subcontractors of all tiers for losses covered by the Builder's Risk policy. This waiver will prevent HCS' insurer from seeking subrogation against First Floor's or a subcontractor's GL coverage if a contractor caused damage to the project.
- The contract states that HCS has the responsibility to pay losses not covered by deductibles, but the contract does not state anything regarding excluded perils, inadequate limits, or property not covered. These can all be significant exposures.
- Other areas as outlined in the attached "Builder's Risk Considerations".

Additional Insured status is still referenced for Pollution Liability coverage even though that coverage is not required by HCS. I recommend striking this language since First Floor is not required to carry Pollution Liability by HCS. As discussed previously, BB&T still recommends that you purchase Pollution Liability coverage to protect First Floor.

Thanks,

Brad Clark, CIC  
Vice President  
BB&T Insurance Services  
4309 Emperor Blvd., Suite 300  
Durham, NC 27703  
919.281.4545 Direct  
678.612.7403 Cell  
[brad.clark@bbandt.com](mailto:brad.clark@bbandt.com)  
mailcode: 120-80-01-15

**From:** Peebles, Kenneth  
**Sent:** November 17, 2015 10:30 AM  
**To:** Blanchard, Kathy; Clark, Brad  
**Subject:** Fwd: Hcs

Ken Peebles  
919-281-4510 office  
919-215-9779 cell  
Via iPhone

Begin forwarded message:

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Date:** November 17, 2015 at 9:55:52 AM EST  
**To:** Nancy Zabrud <NZabrud@sfla.biz>, Mike Wawrzyniak  
<mwawrzyniak@sfla.biz>, "Kenneth J. Peeples" <kpeeples@bbandt.com>,  
Aaron Thomas <athomas@metconus.com>, Mike Richter  
<mrichter@taloving.com>  
**Subject:** Fwd: Hcs

Guys,  
See attached exhibit B in the email from Keith Powell.  
Robbie

Sent from my iPhone

Begin forwarded message:

**From:** "Keith R. Powell" <kpowell@childs-halligan.net>  
**Date:** November 17, 2015 at 9:47:32 AM EST  
**To:** "Robbie Ferris (RFerris@sfla.biz)" <RFerris@sfla.biz>, Mark  
Wolfe <MWolfe002@horrycountyschools.net>, "Ara Heinz  
(AHeinz@horrycountyschools.net)"  
<AHeinz@horrycountyschools.net>, John Gardner  
<JGardner@horrycountyschools.net>, Kenneth Generette  
<KGenerette@horrycountyschools.net>,  
"rmaxey@horrycountyschools.net"  
<rmaxey@horrycountyschools.net>  
**Cc:** "William F. Halligan" <bhalligan@childs-halligan.net>  
**Subject:** RE: Hcs

Robbie & HCS folks:

Ex B updated draft attached for review & comment. Waiting on  
HCS comments on 141 and Ex A.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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accompanying material. If you receive this message in error, please  
notify us by telephone as listed above immediately.

On Nov 17, 2015, at 7:43 AM, Robbie Ferris <RFerris@sfla.biz>  
wrote:



Keith

Can you send the latest version of the contract for  
review

Robbie

Sent from my iPhone

*The information in this transmission may contain proprietary and non-public information of BB&T or its affiliates and may be subject to protection under the law. The message is intended for the sole use of the individual or entity to which it is addressed. If you are not the intended recipient, you are notified that any use, distribution or copying of the message is strictly prohibited. If you received this message in error, please delete the material from your system without reading the content and notify the sender immediately of the inadvertent transmission.*

**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 3:09 PM  
**To:** Robbie Ferris  
**Subject:** Re: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

I'll tell you after this call I'm about to start

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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> On Nov 18, 2015, at 3:06 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

>

> Keith,

> How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

>

> Sent from my iPhone

**Sheri L. Wainscott**

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Wednesday, November 18, 2015 5:07 PM  
**To:** Keith R. Powell  
**Subject:** Re: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Will do

No worries

Please get me a final draft as soon as possible so I can run it by the bonding company

Sent from my iPhone

On Nov 18, 2015, at 5:04 PM, Keith R. Powell <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)> wrote:

Let's do Friday. I got assorted instructions today that will take another round of editing and review tomorrow.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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Begin forwarded message:

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Date:** November 18, 2015 at 3:06:36 PM EST  
**To:** "[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Subject:** Horry

Keith,

How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Wednesday, November 18, 2015 9:48 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com)  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,  
My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.  
Robbie

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Wednesday, November 18, 2015 6:13 PM  
**To:** Robbie Ferris  
**Subject:** HCS contracts forms  
**Importance:** High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.  
I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1<sup>st</sup>. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to "own the plans" but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board's policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to "own" the copyright to your work to the extent you may want to copy your own work elsewhere. Our company policy is that we do not grant ownership of drawings unless we are paid up front for those rights. We could quote you a fee for that however what we typically see is at the time of re-use we would negotiate a contract for the re-use of the plans. We typically charge re-use fee of approximately 6% for a high performance building. In addition, we would need to approve the contractor and key mechanical and electrical subcontractors.
3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to

pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 5:58 PM  
**To:** Keith R. Powell; John Gardner; Mark Wolfe  
**Subject:** HCS Standard Construction Contract Language

All,

Attached are the main parts of Exhibits E & F of our standard construction contract. For items in §6.3.7 in the AIA Document A141, refer to Exhibit E. For items in §9.3.1 and §9.4.1 of AIA Document A141 as well as §A.1.5.1.3 of AIA Document A141 Exhibit A, please refer to Exhibit F. This is our standard language, and I think it would be best if all parties could agree to keep the same language.

Let me know what you think.

Regards,  
*Ara*

Ara Heinz | Procurement Services | P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 12:16 PM  
**To:** Keith R. Powell  
**Subject:** Re: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Thank you, let me know status of things the same as you find out

Sent from my iPhone

On Nov 19, 2015, at 12:06 PM, Keith R. Powell <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)> wrote:

This is the statute - obviously the result of good lobbying by subcontractors: "SECTION 11-35-3030. Bond and security. ... (4) Retention. (b) Release of Retained Funds. When the work to be performed ... is to be performed by ... a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the contract for the purpose of retention. As each division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of retention previously withheld from him by the prime contractor."

In effect there are two pots of retainage that do not mix. The Owner's retainage on the DB is essentially treated as a separate matter from the last 3.5% on each sub's amount in the Schedule of Values. HCS would have to give up its retainage leverage over the DB if it allowed the DB retainage to be reduced as subs are paid in full. I sense they have no interest in that. It would mainly be between the DB and the sub as to when that sub has completed its contract, however.

Keith R. Powell  
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-----Original Message-----

From: Robbie Ferris [<mailto:RFerris@sfla.biz>]  
Sent: Thursday, November 19, 2015 9:38 AM  
To: Keith R. Powell  
Subject: Re: Horry

Keith,

I just realized that the contract says we have to pay our subcontractors all of their retainage as the work progresses but that we cannot bill for that retainage. That means we will have to front 3 1/2% of the contract which is millions of dollars Is that really your intent, is there anyway we can get that relaxed

Sent from my iPhone

> On Nov 18, 2015, at 3:08 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

>

> I'll tell you after this call I'm about to start

>

> Keith R. Powell

> Childs & Halligan, P.A.

> Columbia, South Carolina

> www.childs-halligan.com

> (803) 254-4035

>

>

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>

>> On Nov 18, 2015, at 3:06 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

>>

>> Keith,

>> How are you feeling about signing contracts on Thursday, is Friday

>> more realistic. I am trying to plan my day. I would hate to push it

>> out until Monday but I can also do it on Monday since I will be there

>> anyway for the board meeting at 4 o'clock

>>

>> Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 1:03 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com); William F. Halligan  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Ok, I am reviewing this again, Thanks for the explanation...

---

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Thursday, November 19, 2015 10:36 AM  
**To:** Robbie Ferris  
**Cc:** Aaron Thomas (athomas@metconus.com); William F. Halligan  
**Subject:** RE: HCS contracts forms

Robbie – I may be interrupted as I work right now, so I'll call you back when I know I can stay online.

For #2, I think some middle ground can be reached. The HCS noted that they wished to engage in this program with a common "conceptual" design, and keep using that concept. That common design has now evolved into the FFEP design instead of the one adopted last year by the board – and FFEP has spent a lot of time explaining why this is the evolution or correction of the published HCS design into what you are about to build. HCS essentially wants to be able to consider your expression of the requirements as the new "conceptual" design for future projects. Under the SC Architecture "sealing & direct supervision policy" (attached) the HCS would have little use for anything beyond the conceptual and SD work, since any architect would have to invest the time to do personal supervision of the design for any future project. Under the SC policy, they could not just "re-use" your CD set. Thus, to try to satisfy everybody, could we look at a license to use your proposed design as submitted in the RFP response, including your programming consultant's "updating" or "fixing" of the HCS prototype, but not necessarily the DD and CD documents that you prepare for these 5 specific iterations of that concept? Take another look at the actual language of the contract draft I sent and see if this accomplishes this middle ground. The SC Architecture board used to have a freestanding "prototypical design policy" but I guess it has morphed into the "sealing and direct supervision policy." We can mention this policy in the contract if needed, but this is what I had in mind trying to hit a middle ground with my suggested language.

On #1 (schedule) – I have no news yet and solving this is my priority today.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
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**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** Wednesday, November 18, 2015 9:48 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com)  
**Subject:** RE: HCS contracts forms

Keith,

My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.

Robbie

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Wednesday, November 18, 2015 6:13 PM  
**To:** Robbie Ferris  
**Subject:** HCS contracts forms  
**Importance:** High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.  
I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1<sup>st</sup>. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
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3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 5:58 PM  
**To:** Keith R. Powell; John Gardner; Mark Wolfe  
**Subject:** [REDACTED]

**ATTORNEY-CLIENT  
PRIVILEGE**

Ara Heinz | Procurement Services | ☎ P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 12:54 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com); mrichter@taloving.com  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Keith,

Ok, I suggest we bring the schedule issue to the board Monday night and we sign the contracts after the board meeting. Hopefully the board will agree to pushing the schedule out. I honestly can't imagine them not agreeing that since we have been delayed we should push the end date out.

---

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Thursday, November 19, 2015 12:30 PM  
**To:** Robbie Ferris  
**Subject:** FW: HCS contracts forms  
**Importance:** High

Getting down to home stretch I hope:

1. The staff does not believe it has authority to extend beyond the May 1<sup>st</sup> date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.
2. Mark has a simpler outline of the prototype issue. As far as I can tell this is the main clause to bear down upon today and tomorrow.
3. I can't make any progress on the proposal costs reimbursement.
4. I can't make any progress on the retainage issue.
5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

Keith R. Powell  
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Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Mark Wolfe [<mailto:MWolfe002@horrycountyschools.net>]

**Sent:** Thursday, November 19, 2015 11:35 AM

**To:** Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

**Subject:** [REDACTED]

**ATTORNEY-CLIENT  
PRIVILEGE**

Mark A. Wolfe, RLA | Executive Director of Facilities  
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526  
P: 843/488-6967  
Email: [mwolfe002@horrycountyschools.net](mailto:mwolfe002@horrycountyschools.net)  
Website: [www.horrycountyschools.net](http://www.horrycountyschools.net)



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## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 4:24 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Here is where I think we are, call me anytime to discuss if you have questions:

1. On the schedule I have talked with our subs and they can't accelerate the schedule with an increase in cost. I wish this answer were different so I guess we will have to go get the board to address the issue.
2. We consider the following a very big concession. We will grant HCS use of the drawings as you outlined in 12.3 but I prefer to strike "to the extent permitted by law" in the second to last line. My logic is that if they use my drawings and I am sued at the very least they should guarantee that they will pay my cost of defense and time associated with such defense. Also, in 12.3.1- in the first line change "shall" to "will endeavor to". I don't even know who all of the designers are at this point plus I can't guarantee that they will agree. I will work very hard to get this done.

In addition, in exchange for this right to use the drawings we would ask the following three things be added to the contract.

- a. We be paid for our up front work as previously discussed within 2 weeks of signing the contract.
- b. We be given the right to approve the owners selection of and scope for the commissioning agent. The owner will not hire the commissioning agent without our approval.
3. If the owner is interested we have found that we can buy a \$15,000,000 professional liability insurance policy with an 8 year tail that covers all known designers at the time we bind the policy. That policy will cost us about \$1,300,000.00 but if the owner is willing to limit our liability to the limits of our professional liability insurance we will spend the extra money on that policy. This would be a great benefit because the owner would have significantly more coverage (7 times) more than they would otherwise have. Plus it protects the owner over the 8 years. It costs us more money but I think it would protect us all.
4. Typos:
  - a. 2.1.1- the design builder is repeated
  - b. 9.8.3- review the .....i think you left the word work out?
  - c. Were fine with exhibit e and f that you sent over. We would ask that you consider the following. Under section 5.7 Key Personnel, Contractors and Suppliers: If the Owner has objection to personnel, Contractors, or suppliers and require that another personnel, Contractor, or supplier be used, they should pay for the difference in price.

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]  
**Sent:** Thursday, November 19, 2015 12:30 PM  
**To:** Robbie Ferris  
**Subject:** FW: HCS contracts forms  
**Importance:** High

Getting down to home stretch I hope:

1. The staff does not believe it has authority to extend beyond the May 1<sup>st</sup> date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of

the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.

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**From:** Mark Wolfe [<mailto:MWolfe002@horrycountyschools.net>]

**Sent:** Thursday, November 19, 2015 11:35 AM

**To:** Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

**Subject:** [REDACTED]

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Mark A. Wolfe, RLA | Executive Director of Facilities  
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526  
P: 843/488-6967  
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**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 5:04 PM  
**To:** Robbie Ferris  
**Subject:** Fwd: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Let's do Friday. I got assorted instructions today that will take another round of editing and review tomorrow.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
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Begin forwarded message:

**From:** Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)>  
**Date:** November 18, 2015 at 3:06:36 PM EST  
**To:** "[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)" <[kpowell@childs-halligan.net](mailto:kpowell@childs-halligan.net)>  
**Subject:** Horry

Keith,

How are you feeling about signing contracts on Thursday, is Friday more realistic. I am trying to plan my day. I would hate to push it out until Monday but I can also do it on Monday since I will be there anyway for the board meeting at 4 o'clock

Sent from my iPhone



## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 6:13 PM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** HCS contracts forms  
**Attachments:** Standard HCS Const Contract Lang.pdf; 673757\_2 141 main - Working Draft - (1).docx; 673449 EX A.docx

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

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2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to “own the plans” but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board’s policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to “own” the copyright to your work to the extent you may want to copy your own work elsewhere.
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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 5:58 PM  
**To:** Keith R. Powell; John Gardner; Mark Wolfe  
**Subject:** [REDACTED]

[REDACTED]

# ATTORNEY-CLIENT PRIVILEGE

Ara Heinz | Procurement Services | ☎ P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



## PAYMENT PROCEDURES (Exhibit F)



PROJECT NUMBER:

PROJECT NAME:

### Payment Requests:

An itemized payment request shall be submitted to the District by the 25<sup>th</sup> day of each month that payment is being requested and at completion of the project, using the form provided by the District. The payment request shall not include a) any work anticipated to be completed but not completed by the end of each month being requested; b) any materials not incorporated into the work to be performed except those properly stored as stated in the *Contract Agreement*; c) any damaged, used, inferior or substituted materials not meeting the requirements and standards of the contract; nor d) any amounts the Contractor does not intend to pay to any subcontractor or supplier, where performance or material quality is in question or any other dispute is pending.

If, upon review of the payment request and based upon the best determination of the District, the amount requested does not accurately represent, in the District's opinion, the progress of the completed work to be performed in the Scope of Work (Exhibit A), the District shall have the right to adjust the payment request to more accurately reflect the percentage of completed work/services. The District shall approve and authorize payment to the Contractor no more often than once monthly. For projects less than forty-five (45) days in duration, payment shall be made once upon completion of the work and clean-up of the worksite.

Payment by the District of undisputed amounts shall be made by the 15<sup>th</sup> day of the following month if request is received by Contractor by the 25<sup>th</sup> of the month. If payment request is not received by the 25<sup>th</sup>, the payment will be made within thirty (30) days from the date the District receives the payment request.

### Payment Withholding:

The District may decide not to approve or process the Contractor's payment request or, because of subsequently discovered evidence or observations, may nullify the payment request, in whole or in part, to such extent as may be necessary to protect the District from loss. The District shall notify the Contractor the reason for non-payment. The payment request in dispute or amount withheld shall remain unpaid, without interest accrual, until such time as the Contractor and the District resolve the dispute or the conditions resulting in non-payment.

### Payment at Project Completion:

When the Contractor considers all work in the Scope of Work (Exhibit A) completed, the Contractor shall submit a final payment request along with all final documents required by the District. The District shall inspect the work and, if the District agrees that all work is complete and appears to be in conformance with the contract documents, the District shall process the final payment, less any amounts the Contractor may owe to the District, the Engineer or regulatory authority.

### Payment at Termination:

When termination is predicated upon cause, the Contractor shall not be entitled to further payment until all other obligations related to completion of the work by the District are fulfilled and it is determined by the District a balance of the contract price is remaining and the Contractor is entitled to such payment for performance of work in accordance with the contract documents prior to termination. If costs to finish the work exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid the District, shall survive termination of the *Contract Agreement* as addressed below.

### Recovery of Sums Owed:

Whenever any sum of money is recoverable from or payable by the Contractor to the District, the Engineer or any regulatory authority, the amount may be deducted from any payment to the Contractor under this contract or any other contract between the Contractor and the District at the time. Should the amount owed/recoverable be greater than the amounts yet payable to the Contractor, the Contractor shall reimburse the District for all remaining amounts. The District shall have the right to declare any business entity operated by the Contractor as non-responsible from any future contract awards until all amounts due to the District are paid in full.

The Contractor and District agree to the payment request procedures identified herein as an integral part of the *Contract Agreement*.

End of Exhibit F (Except for Form Provided)

## CHANGE ORDER PROCEDURES (Exhibit E)



PROJECT NUMBER:

PROJECT NAME:

Following are the requirements for Change Order procedures:

**Changes Required in the Work:** All difficulties inherent in construction work cannot be foreseen during design and solicitation of a project; therefore, the District reserves the right to make changes in the work without invalidating the *Contract Agreement*. The *Contract Agreement* shall not be substantially amended or varied nor shall a change in contract price or contract time be effected without execution of a *Change Order*. In the absence of total agreement between the Contractor and the District on the terms of any *Change Order*, the District has the right to issue a *Construction Change Directive (CCD)* as a directive which shall have the same force and effect as a *Change Order* on the Contractor's performance and in effecting the change to the *Contract Agreement*. Any changes authorized shall be performed under applicable provisions of the *Contract Agreement*, and the Contractor shall proceed promptly to execute the work as described. If the Contractor defaults or neglects to execute a change in the work, the District shall have all remedies stated in the contract documents and afforded by the District's Procurement Code and the law, including notification to the Surety.

**Change Order Cost Adjustments:** When the District determines a change to the work is necessary, a request for pricing will be submitted to the Contractor. The Contractor shall reply promptly with an itemized cost to complete such work using the *Contract Change Pricing* form herein. The District shall have the right to make any changes to the pricing deemed appropriate and in accordance with prevailing industry rates and other requirements of the contract documents. Any adjustment to the contract price shall approximate the actual, un-inflated costs to the Contractor or subcontractor with all costs justifiable with prevailing standards including reasonable overhead and profit and shall be based on:

- A. A total sum properly itemized and supported by sufficient substantiating data to permit evaluation, adjustment, and approval by the District.
- B. Unit or incremental pricing stated in the original quote as negotiated and agreed upon between the District and the Contractor.
- C. Any allowances for Contractor's purchase of materials, equipment or processes or for other specified work as established in the contract documents or otherwise required by the District through a properly executed *Change Order* for which the Contractor shall supply invoices of actual costs for reimbursement by the District.

If the Contractor does not respond promptly with an itemized estimate of the change in contract price or contract time when notified by the District of the change in work, the method and amount of the adjustment shall be determined by the District on the basis of reasonable costs or savings attributable to the change in work. If the Contractor does not agree with the change in contract price or contract time stated in the issued directive and cannot resolve the disagreement through the informal complaints process with the District's Construction Manager, the Contractor may pursue the steps for a contract controversy as outlined in the District's Procurement Code. Disagreement with any change in contract price or the initiation by the Contractor of the complaint or contract controversy claims process shall not give rise to a right on the part of the Contractor or any subcontractor to delay or postpone the work described in the Change Order (or directive).

\* **Change Order Allowable Pricing:** For any change in contract price, the Contractor shall provide, itemize, and justify with appropriate supporting data, direct costs attributable to the change. Direct costs attributable to the change in work shall be limited to the following:

- A. Costs of materials, equipment and processes to be incorporated into the work including costs of shipping, handling, fabricating, sales tax (8% required in Horry County and 9% within certain incorporated parts of the City of Myrtle Beach as of August 1, 2009), or other such costs inherent in the provision and delivery of such materials, equipment and processes by the supplier or manufacturer.
- B. Costs of direct labor based on actual hourly labor rates multiplied by the actual work hours required to accomplish the change in work when such change in work results in additional contract time or labor. No Contractor or subcontractor shall ask for direct labor costs, when work required can be accomplished with the existing work force, in conjunction with other concurrent work, and during the current approved contract time. The hourly labor rate for any additional contract time or laborers shall be actual hourly rates not to exceed thirty dollars (\$30) per hour unless documented proof of payment of a higher hourly rate for a specific skilled laborer is approved by the District prior to *Change Order* execution.
- C. Costs of fringe benefits for additional direct labor, including social security, unemployment or other taxes, health and workers' compensation insurances, or other benefits required by agreement, custom or applicable laws. Such fringe benefit rate shall not exceed twenty-eight percent (28%) and the District has the right to request itemized documentation proving the fringe benefit rate used.
- D. Costs of machinery or equipment rented or leased in the short term specifically for completion of the additional work to be performed. Such equipment rented/leased shall not customarily be owned by the Contractor or any subcontractor affected by the change but shall be necessary to the accomplishment of the work required. Copies of invoices for such rental shall be provided to document the cost of rental or lease of machinery or equipment. The District shall not pay for use of Contractor- or subcontractor-owned equipment or machinery, which costs are included in the overhead computation.
- E. Costs of permits or inspection fees directly attributable to the change in work and not included as part of the Contractor's requirements nor attributable to the Contractor's non-performance or non-conformance to the *Contract Agreement*.
- F. Other such direct costs directly attributable to the work and approved by the District.
- G. Any additional cost resulting from an amendment to performance and payment bonds but in no event more than one percent (1%) after application of overhead and profit provided for elsewhere. The Contractor shall be responsible for notifying the Surety of any changes in the contract price, if required by the Surety.

Costs itemized shall not exceed the unit costs as listed in the most current issue of Means Construction Cost Data or actual costs justified to the satisfaction of the District.

\* **Unallowable Costs:** Any costs which may be perceived by the Contractor to be indirectly attributable to a change in work shall not be included in direct costs but shall be considered part of the overhead and profit rate applied to direct costs. Such costs not to be included in direct costs shall be, by way of illustration and not limitation:

- A. Labor hours and fringe benefit costs of the worksite superintendent(s) when such costs were included, or should have been included, in the original bid submitted or result from the Contractor's inability to meet the approved schedule or required completion date. The Contractor must prove, to the satisfaction of the District, such additional costs are directly attributable to any extension of time beyond the last approved completion date. An increase in contract price for additional site supervision shall be at the District's sole discretion.
- B. Perceived additional costs attributable to the Project Manager or supervision and coordination of subcontractors, suppliers or Contractor employees.
- C. Costs related to use, rental, purchase or replacement of equipment generally or customarily necessary to accomplish the work but not to be incorporated into the work such as, by way of illustration and not limitation, hand tools, generators, cleaning equipment, scaffolding, signage, fencing, vehicles, fuel, and so forth.
- D. Transportation or travel costs related to the transporting of hired or contracted supervisors, workers or subcontractors to and from the worksite or between worksites or to pick-up and deliver materials, equipment and processes to the worksite by the Contractor's or subcontractor's own forces including parking, tolls, fines, meals, per diem, hotel, living expenses, or other such costs.
- E. Costs attributable to expediting delivery of materials, equipment or processes including telephone calls, facsimile transmissions, copying, employee labor and benefits, and so forth.
- F. Costs attributable to maintaining a local office, home office or corporate office as well as office staffing, equipment and consumables, and so forth.
- G. Costs for maintaining on-site facilities, including work trailers, telephones, computers, licenses, temporary utilities, and so forth.
- H. Contracted services such as accountants, payroll service providers, attorneys, catering and so forth.
- I. Catering or vending services, portable toilets, dumpsters, and so forth.
- J. Other such indirect costs of doing business or costs normally considered inclusive in overhead.

**Allowable Overhead and Profit Charges:** Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

End of Exhibit E (Except for Forms Provided)

# DRAFT AIA Document A141™ - 2014

## Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 19th day of «November» in the year two thousand fifteen (2015). »  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina  
335 Four Mile Rd. | PO Box 260005  
Conway, SC 29528  
District Office Phone 843.488.6700

and the Design-Builder:  
(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

for the following Project:  
(Name, location and detailed description)

New Carolina Forest Middle School«  
(per Owner's Request for Proposals No. 1415-91)

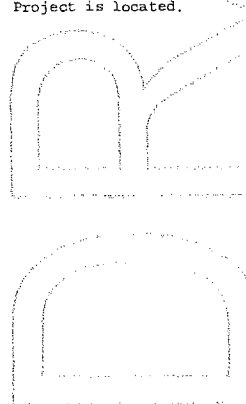
Note: references to Owner's Request for Proposals No. 1415-91 include its addenda.

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

«Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Harry County Board of Education on November 2, 2015.

§ 1.1.2 The Owner's design requirements for the Project and related documentation:  
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-9 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.3 The Project's physical characteristics:  
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:  
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.5

« Number not used. »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:  
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015. »

§ 1.1.7 The Owner's design and construction milestone dates: Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

1. Architect

« SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601. »

2. Consultants

« Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

3. Contractors

« Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:  
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3) including all post-occupancy requirements published in the solicitation as amended by addenda »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)  
Horry County Schools  
Facilities Department, 1160 E Highway 50  
Conway, SC 29526 »  
«843.488.6965 »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:  
(List name, address and other information.)

«Owner may utilize third party project management which will also receive submittals. N/A »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

«To be determined by Owner. If retained, such consultants will be identified promptly. »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

Robbie Ferris, S.C. AR.6106  
FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225, Raleigh, NC 27601  
919-573-6350

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

## § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

[ « X » ] Litigation in a court of competent jurisdiction, nonjury before a circuit judge in Horry County, SC.



#### § 1.4 Definitions

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

The Design-Builder may invoice the Design-Builder may invoice the owner for (1) Preconstruction estimating and bidding and (2) Schematic Design Work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment. The costs of competition in Solicitation No. 1415-91 are not reimbursable.

§ 2.1 number not used]

### § 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. The Owner will not pay interest on unpaid sums. This is a specific waiver of requirements of S.C. Code Ann. §§ 29-6-30 and 29-6-50.

### § 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

## ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

### § 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**Building Permit and Other Permits and Fees:** No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts, errors, and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) in conjunction with the State Fire Marshal shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

#### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

§ 3.1.8.2 In addition to the requirements of § 3.1.8.1, the Design-Builder shall provide similar information through in-person progress report presentations to the Horry County Board of Education each month during one of the Board's public meetings.

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#### **§ 3.1.9 Design-Builder's Schedules**

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### **§ 3.1.11 Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

1. assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

#### ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

##### § 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

##### § 4.4 Design-Builder's Construction Proposal

§ 4.4.1 The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's original Design Requirements and the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion (or phased beneficial occupancy, if applicable and acceptable to the Owner);
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

#### ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

##### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.2.1 The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

##### § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques,

sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**Maintenance of Record Drawings:** The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

**Professional Certifications:** When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**Contractor's Quality Control Program:** The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:
- A. Title VII of the Civil Rights Act of 1964, as may be amended.
  - B. Age Discrimination in Employment Act of 1964, as may be amended.
  - C. Title I of the Americans Disabilities Act of 1990, as may be amended.
  - D. Equal Pay Act of 1963, as may be amended.
  - E. Fair Labor Standards Act, as may be amended.
  - F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
  - G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

**Employment Taxes and Benefits:** ~~The Unless under order from the Internal Revenue Service or South Carolina state government, the District shall not~~ withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

**Project Key Staff – Project Manager:** The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager identified in the *Scope of Work (Exhibit A)* or the duties and status of the Project Manager during the course of the project without approval of the District.

**Project Key Staff -- Worksite Superintendent(s):** The Contractor shall employ at least one (1) full-time, competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent identified in the *Scope of Work (Exhibit A)* or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

**Worksite Communications:** The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

### **§ 5.3 Labor and Materials**

**§ 5.3.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

**§ 5.3.2** When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

**§ 5.3.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### **§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

**§ 5.5.2** The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the



Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### § 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

#### § 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

#### **§ 5.8 Documents and Submittals at the Site**

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

#### **§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### **§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- 1 The change in the Work;
- 2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- 3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- 1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- 3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- 1 Additional costs of professional services;
- 2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- 5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work, provided that costs of premiums, permits, and taxes that are based on marginal additions to an existing sum or quantity may all be reasonably estimated subject to correction at the time of Final Payment or other agreed time when the actual costs of the marginal additions can be determined or mutually agreed upon; and
- 6 Additional costs of supervision and field office personnel directly attributable to the change. **HCS IS PROVIDING ITS CUSTOM ALLOWABLE COST RULES - WILL BE INSERTED A.S.A.P.**

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**Allowable Overhead and Profit Charges:** Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.

C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

**Retainage:** The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the ~~Contract Agreement~~ and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the ~~Contract Agreement~~ and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

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§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

### § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys

describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

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§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

#### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

#### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

### ARTICLE 8 TIME

#### § 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

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The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

#### § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 Weather Delays: When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 Anticipated Weather Delays: A total of five (5) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the five (5) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the actual impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

### ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

#### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.



## § 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

## § 9.3 Applications for Payment

§ 9.3.1 At least ~~ten~~ TWENTY ONE days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

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§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

## § 9.4 Certificates for Payment

SEE § A.1.5.1.3 FOR SCHEDULE. In accordance with the schedule set forth in § A.1.5.1.3, The Owner shall, within twenty-one days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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## § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;

- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builders;
- .3 failure of the Design-Builders to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builders and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builders to whom the Design-Builders failed to make payment for Work properly performed or material or equipment suitably delivered.

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builders shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builders no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builders is entitled, reflecting percentages actually retained from payments to the Design-Builders on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builders shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builders, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builders to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builders, information regarding percentages of completion or amounts applied for by the Design-Builders and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builders.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builders that the Design-Builders has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builders, amounts paid by the Owner to the Design-Builders for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builders payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

#### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builders, within the time required by the Design-Build Documents, then the Design-Builders may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builders' reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall ~~prepare and~~ submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall ~~make an inspection or view the~~ to determine whether the Work or designated portion thereof is substantially complete. If the Owner's ~~inspection or view~~ discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another ~~inspection or view of the Work by the Owner to determine Substantial Completion.~~

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§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will ~~prepare and~~ obtain for the Owner's signature an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly ~~inspect or view~~ the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

#### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

#### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and

- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material

or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.2.1, or by terms of an applicable special warranty required by the Design-Build Documents (the three-year duration of the Design-Builder's post-occupancy obligations), any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it

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promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 This two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 This two-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

### ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, and as a prototypical basis for future Owner designs, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build

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Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project, or as a prototypical basis for future Owner designs. Should the Owner reuse the Documents and/or Specifications for other Projects, then the Architect, if not retained for the other Project(s), shall be relieved of any liabilities arising out of the Project(s) and to the extent permitted by law the Owner will indemnify and hold harmless the Architect from any Claims arising out of such other Project(s).

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§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, and as a prototypical basis for future Owner designs, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

#### ARTICLE 13 TERMINATION OR SUSPENSION

##### § 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.



**§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

**§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

**§ 13.2.2 Termination by the Owner For Cause**

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

**§ 13.2.3 Suspension by the Owner for Convenience**

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 13.2.4 Termination by the Owner for Convenience**

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

**ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION**

**§ 14.1 Claims**

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

**§ 14.1.3 Notice of Claims**

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ 14.1.5 Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 14.1.6 Claims for Additional Time**

**§ 14.1.6.1** If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 14.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. [covered elsewhere]

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**§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

**§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

**§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### § 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

### ARTICLE 15 MISCELLANEOUS PROVISIONS

#### § 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

#### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### § 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

#### § 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees,

consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

#### § 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### § 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

#### Conduct of the Architect's Design-Builder's Principals, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Architect-Design Builder shall be responsible for ensuring compliance by the Architect-Design Builder and any employees, agents or representatives, or subcontractors of the Architect-Design Builder, including all Design Consultants, to the following:

- A. No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.
- B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.
- C. No improper attire, actions or gestures while on any District property.  
No smoking on District property in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. Secure SLED (State Law Enforcement Division) criminal background checks on all the Architect's Design-Builder's Principals, employees, agents, and representatives, and subcontractors, performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives, or subcontractors, of the Architect and Design Consultants-Builder having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the respective Architect and Design Consultant-Builder and made available to appropriate District personnel or the District's legal counsel immediately upon request.

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#### Promotional Materials

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

#### Drug-Free Workplace

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform

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to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

#### Right to Audit Project

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order (Attachment E) data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

**Traffic Control On-Site and Off-Site:** The Contractor-Design-Build shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Contractor-Design-Build shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

**Safety Designee:** The Contractor-Design-Build shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized individuals.

**Licenses and Permits:** During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**Iran Divestment Act:** The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: [http://procurement.sc.gov/PS/PS-irandivestment.pptm\(.\)](http://procurement.sc.gov/PS/PS-irandivestment.pptm(.)) Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List.

**Immigrant Workers:** The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

**SC IMMIGRATION LAW.** S.C. Code § 8-14-40 Compliance: Design-Build certifies that the Design-Build will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

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Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

#### ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Owner's Request for Proposals No. 1415-91 (with addenda) and Design-Builder's Proposal to the same as accepted by the Owner/Horry County Board of Education.
- .5 Post-Occupancy Requirements stated in Owner's Request for Proposals No. 1415-91.

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This Agreement entered into as of the day and year first written above.

OWNER (Signature)

John K. Gardner, Chief Financial Officer

(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member

(Printed name and title)



# DRAFT AIA Document A141™ - 2014

## Exhibit A

### Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014 Standard Form of Agreement Between Owner and Design-Builder dated the ~~«twentieth»~~ day of ~~«November»~~ in the year ~~«two thousand fifteen»~~ (the "Agreement")  
(In words, indicate day, month and year.)

for the following PROJECT:  
(Name and location or address)

New Carolina Forest Middle School per Owner's Request for Proposals No. 1415-91 and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina  
335 Four Mile Rd.  
Conway, SC 29528

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

The Owner and Design-Builder hereby amend the Agreement as follows.

#### TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

#### ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

ADDITIONS AND DELETIONS:  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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User Notes: (138)527406

(Check the appropriate box.)

[ «X» ] Stipulated Sum, in accordance with Section A.1.2 below

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be «forty-five million nine hundred thirty thousand two hundred twenty-seven dollars (\$ «45,930,227.00»), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ A.1.5.1.3 [HCS TO PROVIDE ASAP] Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » ( « » ) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

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§ A.1.5.1.5 With each Application for Payment the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «three and one-half» percent ( «3.5» %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;

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- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «three and one-half» percent («3.5» %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

#### § A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements which extend beyond final payment.

### ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

No later than May 1, 2017.

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

«Liquidated damages per A141-2014.»

### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the Owner's Design Requirements (including addenda to the RFP) and the Design-Builder's proposal to the Owner pursuant to Owner's Solicitation No. 1415-91.:

§ A.3.1.5 Allowances and Contingencies:

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

.1 Allowances

Owner Furniture Allowance \$ 1,500,000

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Owner Hardware Allowance	\$ 350,000
Owner Controls Allowance	\$ 650,000
Owner Fire Alarm Allowance	\$ 750,000
Owner Special Inspections All	\$ 150,000
Owner Commissioning Allowance	\$ 125,000
Owner Technology Allowance	\$ 1,865,000
Owner Landscaping Allowance	\$200,000

## .2 Contingencies

Owner contingency is currently Not in Contract and amounts will be determined by Modification.

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### § A.3.1.6 Design-Builder's assumptions and clarifications:

Pursuant to the Proposal accepted by the Horry County Board of Education on November 2, 2015.

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## ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:  
(Identify name, title and contact information.)

Carolina Forest Middle School  
Superintendent: Mark Branch  
Project Manager: Charlie Rollins  
Assistant Superintendent: Gary Pipkin

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:  
(List name, discipline, address and other information.)

SFL+ Architects: Architect, Raleigh NC  
Melcon/TA Loving joint venture: General Contractor, Pembroke NC

## ARTICLE A.5 COST OF THE WORK

### § A.5.4 Other Agreements

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

### § A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### § A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an

adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

«John Gardner, Chief Financial Officer» « »  
(Printed name and title)

DESIGN-BUILDER (Signature)

Robert Ferris, Authorized Member « » « »  
(Printed name and title)

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## Sheri L. Wainscott

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**From:** Keith R. Powell  
**Sent:** Wednesday, November 18, 2015 10:53 PM  
**To:** Robbie Ferris  
**Subject:** Re: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Thank you for your prompt reply to the positions taken by our client. I hope your comments will be useful information for moving to a resolution of these issues tomorrow.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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On Nov 18, 2015, at 9:47 PM, Robbie Ferris <[RFerris@sfla.biz](mailto:RFerris@sfla.biz)> wrote:

Keith,  
My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.  
Robbie

---

**From:** Keith R. Powell [<mailto:kpowell@childs-halligan.net>]  
**Sent:** Wednesday, November 18, 2015 6:13 PM  
**To:** Robbie Ferris  
**Subject:** HCS contracts forms  
**Importance:** High

---

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.

I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1<sup>st</sup>. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.

2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to "own the plans" but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board's policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to "own" the copyright to your work to the extent you may want to copy your own work elsewhere. Our company policy is that we do not grant ownership of drawings unless we are paid up front for those rights. We could quote you a fee for that however what we typically see is at the time of re-use we would negotiate a contract for the re-use of the plans. We typically charge re-use fee of approximately 6% for a high performance building. In addition, we would need to approve the contractor and key mechanical and electrical subcontractors.
3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]  
**Sent:** Wednesday, November 18, 2015 5:58 PM  
**To:** Keith R. Powell; John Gardner; Mark Wolfe  
**Subject:** [REDACTED]

# ATTORNEY-CLIENT PRIVILEGE

Ara Heinz | Procurement Services | ☎ P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)





## Sheri L. Wainscott

---

**From:** Robbie Ferris <RFerris@sfla.biz>  
**Sent:** Thursday, November 19, 2015 6:12 PM  
**To:** Keith R. Powell  
**Subject:** horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

For the site they don't have yet we need to use calender days from a notice to proceed or something of the sort...unless you have another idea...I just don't know where they are in buying that site.



Robert W. Ferris, AIA, REFP, LEED AP  
CEO/President  
SfL+a Architects  
333 Fayetteville Street, Suite 225  
Raleigh, NC 27601  
Cell: 919.610.2251  
Fax: 919.573.6355  
[rferris@sfla.biz](mailto:rferris@sfla.biz)  
[www.sfla.biz](http://www.sfla.biz)

"I'd put my money on solar energy... I hope we don't have to wait till oil and coal run out before we tackle that." Thomas Edison, in conversation with Henry Ford and Harvey Firestone, March 1931.

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Thursday, November 19, 2015 10:36 AM  
**To:** Robbie Ferris  
**Cc:** Aaron Thomas (athomas@metconus.com); William F. Halligan  
**Subject:** RE: HCS contracts forms  
**Attachments:** Sealing and Direct Supervision Policy.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Robbie – I may be interrupted as I work right now, so I'll call you back when I know I can stay online.

For #2, I think some middle ground can be reached. The HCS noted that they wished to engage in this program with a common "conceptual" design, and keep using that concept. That common design has now evolved into the FFEP design instead of the one adopted last year by the board – and FFEP has spent a lot of time explaining why this is the evolution or correction of the published HCS design into what you are about to build. HCS essentially wants to be able to consider your expression of the requirements as the new "conceptual" design for future projects. Under the SC Architecture "sealing & direct supervision policy" (attached) the HCS would have little use for anything beyond the conceptual and SD work, since any architect would have to invest the time to do personal supervision of the design for any future project. Under the SC policy, they could not just "re-use" your CD set. Thus, to try to satisfy everybody, could we look at a license to use your proposed design as submitted in the RFP response, including your programming consultant's "updating" or "fixing" of the HCS prototype, but not necessarily the DD and CD documents that you prepare for these 5 specific iterations of that concept? Take another look at the actual language of the contract draft I sent and see if this accomplishes this middle ground. The SC Architecture board used to have a freestanding "prototypical design policy" but I guess it has morphed into the "sealing and direct supervision policy." We can mention this policy in the contract if needed, but this is what I had in mind trying to hit a middle ground with my suggested language.

On #1 (schedule) – I have no news yet and solving this is my priority today.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** Wednesday, November 18, 2015 9:48 PM  
**To:** Keith R. Powell  
**Cc:** Aaron Thomas (athomas@metconus.com)  
**Subject:** RE: HCS contracts forms

Keith,

My thoughts are outlined below in red. I have done my best but these requests cost money that we don't have in the job.

Robbie

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]

**Sent:** Wednesday, November 18, 2015 6:13 PM

**To:** Robbie Ferris

**Subject:** HCS contracts forms

**Importance:** High

Robbie – Following a lengthy discussion with the HCS, attached are the two main documents marked up again. Also attached is a PDF I just got containing information about two topics referenced in the drafts, which I wish had been provided months ago.

You should carefully review these, especially highlighted areas. Three key issues:

1. HCS wants to maintain the May 1 substantial completion date that is in the consciousness of the public and the board, unless and until the Board agrees to a change. I don't feel like this request is reasonable in addition the schedule is not totally within my control. Our subcontractors bid the work in accordance with the schedule we published. Our schedule was in accordance with the RFP. To accelerate the schedule our subs will have to work nights and weekends or supplement their staff, which is costly.  
I assume this is would be very distasteful to the Board but after contracts are signed we would be willing to put together a cost to accelerate the projects and complete the work by May 1<sup>st</sup>. Assembling a cost to accelerate and developing a new schedule would take tremendous effort and time so it would need to be done after contracts are executed. I know you had your reasons but I wish HCS had signed the permit applications when we had requested, this would have made your request to accelerate the project much easier to manage. I am so very sorry but the only way I know to accelerate the schedule.
2. HCS also wants to be able to use the designs as prototypes for the future, another topic which I wish had been brought up sooner but one to which they attach obvious importance. They wanted to "own the plans" but I have tried to convert this to a license to use it as a prototype, recognizing the SC Architecture board's policy on the same requires re-sealing of re-used plans anyway, and also recognizing that there is no need for HCS to "own" the copyright to your work to the extent you may want to copy your own work elsewhere. Our company policy is that we do not grant ownership of drawings unless we are paid up front for those rights. We could quote you a fee for that however what we typically see is at the time of re-use we would negotiate a contract for the re-use of the plans. We typically charge re-use fee of approximately 6% for a high performance building. In addition, we would need to approve the contractor and key mechanical and electrical subcontractors.
3. HCS does not want to pay for "proposal prep" although they are agreeing to being billed for the part of your work that is carrying forward into the end product, so you will see that noted. While HCS has no obligation to pay for proposal prep as we requested the AIA document allows for proposal prep work to be invoiced at contract signing because there is a recognition of the massive effort a design build proposal takes. If we must wait to submit for proposal prep and SD's with our first application for payment we cannot object however I would humbly request that if HCS has the ability to pay us for proposal prep, SDs and preconstruction in accordance with the standard AIA contract that HCS allow us to invoice when the contract is signed. If you allow us to invoice at contract signing and if HCS can commit to us receiving payment within two weeks of the contract signing you can simply add \$5000.00 per job to the owner contingency. This is approximately equal to the interest we would pay our bank if we borrowed the money on our line and if we had to wait for payment in accordance with the normal payment cycle in the contract.

I realize we will need to discuss these issues tomorrow, which is why planning to sign something at 3 pm probably wouldn't work given that I have to make 5 sets to cover all the projects, and can't do that until terms are settled.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com

(803) 254-4035

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**From:** Ara Heinz [<mailto:AHeinz@horrycountyschools.net>]

**Sent:** Wednesday, November 18, 2015 5:58 PM

**To:** Keith R. Powell; John Gardner; Mark Wolfe

**Subject:** [REDACTED]

**ATTORNEY-CLIENT  
PRIVILEGE**

Ara Heinz | Procurement Services | P: 843/488-6930  
Horry County Schools | 335 Four Mile Rd. | Conway, SC 29526  
Website: [Procurement.horrycountyschools.net](http://Procurement.horrycountyschools.net)



## SEALING AND DIRECT SUPERVISION POLICY

### **Pertinent Sections of the Law and Regulations**

#### ***Section 40-3-280. Seals***

*(A) Every architect and firm practicing in this State shall have a seal, the impression of which shall contain the name, the place of business, and the words "Registered Architect, State of South Carolina" with which they shall stamp all drawings, prints, and specifications for use in their profession.*

*(B) The seal of the individual architect in responsible charge, as well as the seal of the firm, must appear on each print of the drawings and the index sheet, or sheets, of each set of specifications offered to secure a building permit and one record set for use on the construction site. The required seal identification may be a rubber stamp impression placed on original drawings and specification copy. The architect in responsible charge shall affix his signature over his seal. An electronic seal and signature may be used in lieu of an original seal and signature by applicable policy or regulation.*

#### ***Section 40-3-320. Building officials required to have sealed plans.***

*The building official or other authority charged with the responsibility of issuing building or other similar permits of any county, municipality, or other subdivision, before issuing the permit, must be in possession of a sealed set of plans and specifications for which the seal of a registered architect is required and to verify that the architect who sealed the architectural plans and specifications is an architect registered in South Carolina.*

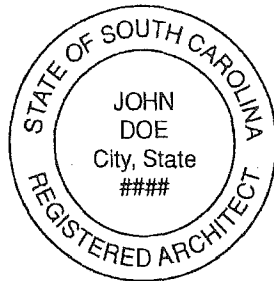
#### ***Regulation 11-11 Seals***

*A. The seal and signature of the architect in responsible charge and the architectural firm's seal shall appear on all architectural documents to be filed for public record and shall be construed to obligate the architect and the firm. A firm seal alone is insufficient; documents shall be signed and sealed by the responsible architect. Record documents used for obtaining building permits shall be so signed. The signing and sealing of the index sheet(s) or the title page of specifications shall be considered adequate.*

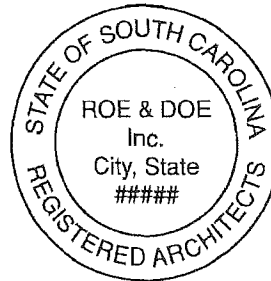
*B. An architect shall not affix, or permit to be affixed, the architect's seal or name to any plans, specifications, drawings, or other related documents which were not prepared by the architect or under the architect's direct responsible charge. Architects shall not use their seal or perform any other service as an architect unless holding at the time a current Certificate of Registration.*

*C. Description of Registrant's Seal. The seal shall be circular in shape and 1 3/4 inches in diameter. Concentric with the outside of the seal there shall be a circle 1 3/16 inches in diameter; in the annular space between the circle and the outside of the seal shall be the words "State of South Carolina" at the top and "Registered Architect" at the bottom. The name of only one (1) architect, business location, and registration number shall be placed within the inner circle.*

*D. Description of Firm Seals. The seal shall be circular in shape and 1 3/4 inches in diameter. Concentric with the outside of the seal there shall be a circle 1 3/16 inches in diameter; in the annular space between the circle and the outside of the seal shall be the words "State of South Carolina" at the top and "Registered Architects" at the bottom. The name, business location, and license number of the firm shall be placed within the inner circle.*



(INDIVIDUAL)



(FIRM)

*E. An electronic seal and signature are permitted to be used in lieu of an original seal and signature when the following criteria, and all other requirements of this section, are met:*

- (1) It is a unique identification of the professional;*
- (2) It is verifiable;*
- (3) It is under the professional's direct and sole control;*
- (4) It is linked to a document in such a manner that changes are readily determined and visually displayed if any data contained in the document file was changed subsequent to the electronic seal and signature having been affixed to the document, and*
- (5) Changes to the document after affixing the electronic seal and signature shall cause the electronic seal and signature to be removed or altered in such a way as to invalidate the electronic seal and signature;*
- (6) In addition, once the electronic seal and signature are applied to the document, the document shall be available in a view only format if the document is to be electronically transmitted;*
- (7) The graphic image of the electronic seal and signature shall be readily available and produced in a manner acceptable to the board. It shall contain the same words and shall have substantially the same graphic appearance and size as required above when the image of the electronically transmitted document is viewed at the same time as the document in its original form.*
- (8) The graphic display of the seal shall be in compliance with state law.*

#### **11-12 D. Professional Conduct.**

*(1) An architect or firm shall not sign or seal drawings, specifications, reports, or other professional work for which the architect or firm does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of portions of such professional work prepared by the architect's, or firm's consultants, registered under this or another professional registration law of this jurisdiction, the architect or firm may sign or seal*

*that portion of the professional work if the architect or firm has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy.*

### Commentary

When sealing plans for projects in South Carolina, the individual architect must seal only those plans he/she prepared or which were prepared under his/her direct supervision. Additionally, the firm's seal must appear on all architectural documents. Rubber stamps, embossing seals or electronically produced seals are permissible.

Architects shall not seal drawings and/or specifications that are not prepared under their direct supervision and review. Examples of drawings and/or specifications are those prepared by suppliers, vendors, subcontractors, or others when bound as part of bid or contract documents, including but not limited to the following:

- food service
- acoustical systems
- auditorium or stadium seating
- science equipment
- stage performance equipment
- wiring schematics
- control diagrams
- fire/smoke seals

Drawings and/or specifications not prepared under the direct supervision of the architect may be included as a part of the bid or contract documents provided that the following conditions are adhered to:

- Documents shall bear originators' firm name, address, date, and title block.
- Technical system designs which require the seal of a South Carolina registered engineer shall bear such seals.
- All documents shall be listed in the project Drawing Index and/or Table of Contents under a heading or subscript clearly indicating that they were not prepared under the supervision of the 'design professional in responsible charge'.

A minimum two sets of project plans must be sealed and signed. Additional sets may be sealed at the architect's discretion or for other purposes, but only two sets are required by South Carolina law to be sealed:

- one set offered to secure a building permit;
- one set for use at the construction site.

## Frequently Asked Questions

1. A young man who will graduate from architecture school next year has begun taking on small projects and recently approached me about sealing plans he prepared for a small day care facility, (or any building type that requires a Seal). I reviewed them thoroughly and they are acceptable. May I seal the drawings?

A. *No. The drawings were not prepared under your direct supervision as a licensed architect.*

2. A young man who will graduate from architecture school next year works in my office during the summer, under my direct supervision, on small projects. I review the work. Is it ok to seal them although I didn't actually do the drawings?

A. *Yes. You may seal the drawings since the drawings were prepared under your direct supervision.*

3. With the technology available today, is remote supervision acceptable? We email files between offices of our firm for review, editing and consolidation. Is that considered "direct supervision"?

A. *Yes.*

4. One of the partners in the firm for which I work leaves his rubber seal in his desk accessible to office staff, and his computer seal can be downloaded by others. He does a lot of client development and is often out of the office. Is it ok for employees to affix his seal to a set of plans? What if he sends an email giving permission?

A. *For his seal to be on the plans, he must have reviewed the work, approved the documents, and released them to be submitted to permitting authorities. Be cautious with your seal—when you seal drawings, or authorize others to seal drawings on your behalf, you are attributing your name as legally responsible for the project.*

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5. I know for a fact that another architect is plan-stamping the work of a local designer. I confronted him about it, and he said the plans are well done and meet code. He is just helping the young man make a living. Should I file a complaint? Is so, will I be required to sign it and to provide evidence to the board investigator?

A. *Yes, you should file a complaint, or seek to file a complaint through a professional organization. You will likely be asked for a certain amount of information in order for the organization to ascertain the validity of the complaint.*



**Sheri L. Wainscott**

---

**From:** Keith R. Powell  
**Sent:** Thursday, November 19, 2015 12:06 PM  
**To:** Robbie Ferris  
**Subject:** RE: Horry

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

This is the statute - obviously the result of good lobbying by subcontractors: "SECTION 11-35-3030, Bond and security. ... (4) Retention. (b) Release of Retained Funds. When the work to be performed ... is to be performed by ... a prime contractor and multiple subcontractors, the work contracted to be done by each individual contractor or subcontractor is considered a separate division of the contract for the purpose of retention. As each division of the contract is certified as having been completed, that portion of the retained funds which is allocable to the completed division of the contract must be released forthwith to the prime contractor, who, within ten days of its receipt, shall release to the subcontractor responsible for the completed work the full amount of retention previously withheld from him by the prime contractor."

In effect there are two pots of retainage that do not mix. The Owner's retainage on the DB is essentially treated as a separate matter from the last 3.5% on each sub's amount in the Schedule of Values. HCS would have to give up its retainage leverage over the DB if it allowed the DB retainage to be reduced as subs are paid in full. I sense they have no interest in that. It would mainly be between the DB and the sub as to when that sub has completed its contract, however.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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-----Original Message-----

**From:** Robbie Ferris [<mailto:RFerris@sfla.biz>]  
**Sent:** Thursday, November 19, 2015 9:38 AM  
**To:** Keith R. Powell  
**Subject:** Re: Horry

Keith,  
I just realized that the contract says we have to pay our subcontractors all of their retainage as the work progresses but that we cannot bill for that retainage. That means we will have to front 3 1/2% of the contract which is millions of dollars. Is that really your intent, is there anyway we can get that relaxed?

Sent from my iPhone

---

> On Nov 18, 2015, at 3:08 PM, Keith R. Powell <kpowell@childs-halligan.net> wrote:

>

> I'll tell you after this call I'm about to start

>

> Keith R. Powell

> Childs & Halligan, P.A.

> Columbia, South Carolina

> www.childs-halligan.com

> (803) 254-4035

>

>

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>

>> On Nov 18, 2015, at 3:06 PM, Robbie Ferris <RFerris@sfla.biz> wrote:

>>

>> Keith,

>> How are you feeling about signing contracts on Thursday, is Friday

>> more realistic. I am trying to plan my day. I would hate to push it

>> out until Monday but I can also do it on Monday since I will be there

>> anyway for the board meeting at 4 o'clock

>>

>> Sent from my iPhone

## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Thursday, November 19, 2015 12:30 PM  
**To:** Robbie Ferris (RFerris@sfla.biz)  
**Subject:** FW: HCS contracts forms

**Importance:** High

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Getting down to home stretch I hope:

1. The staff does not believe it has authority to extend beyond the May 1<sup>st</sup> date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.
2. Mark has a simpler outline of the prototype issue. As far as I can tell this is the main clause to bear down upon today and tomorrow.
3. I can't make any progress on the proposal costs reimbursement.
4. I can't make any progress on the retainage issue.
5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Mark Wolfe [<mailto:MWolfe002@horrycountyschools.net>]

**Sent:** Thursday, November 19, 2015 11:35 AM

**To:** Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

**Subject:** [REDACTED]

[REDACTED]

# ATTORNEY-CLIENT PRIVILEGE

Mark A. Wolfe, RLA | Executive Director of Facilities  
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526  
P: 843/488-6967  
Email: [mwolfe002@horrycountyschools.net](mailto:mwolfe002@horrycountyschools.net)  
Website: [www.horrycountyschools.net](http://www.horrycountyschools.net)



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## Sheri L. Wainscott

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**From:** Keith R. Powell  
**Sent:** Thursday, November 19, 2015 4:25 PM  
**To:** Robbie Ferris  
**Subject:** RE: HCS contracts forms

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Thanks – will get back to you.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
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---

**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** Thursday, November 19, 2015 4:24 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts forms

Here is where I think we are, call me anytime to discuss if you have questions:

1. On the schedule I have talked with our subs and they can't accelerate the schedule with an increase in cost. I wish this answer were different so I guess we will have to go get the board to address the issue.
2. We consider the following a very big concession. We will grant HCS use of the drawings as you outlined in 12.3 but I prefer to strike "to the extent permitted by law" in the second to last line. My logic is that if they use my drawings and I am sued at the very least they should guarantee that they will pay my cost of defense and time associated with such defense. Also, in 12.3.1- in the first line change "shall" to "will endeavor to". I don't even know who all of the designers are at this point plus I can't guarantee that they will agree. I will work very hard to get this done.

In addition, in exchange for this right to use the drawings we would ask the following three things be added to the contract.

- a. We be paid for our up front work as previously discussed within 2 weeks of signing the contract.
- b. We be given the right to approve the owners selection of and scope for the commissioning agent. The owner will not hire the commissioning agent without our approval.
3. If the owner is interested we have found that we can buy a \$15,000,000 professional liability insurance policy with an 8 year tail that covers all known designers at the time we bind the policy. That policy will cost us about \$1,300,000.00 but if the owner is willing to limit our liability to the limits of our professional liability insurance we will spend the extra money on that policy. This would be a great benefit because the owner would have significantly more coverage (7 times) more than they would otherwise have. Plus it protects the owner over the 8 years. It costs us more money but I think it would protect us all.
4. Typos:
  - a. 2.1.1- the design builder is repeated
  - b. 9.8.3- review the .....i think you left the word work out?

- c. Were fine with exhibit e and f that you sent over. We would ask that you consider the following. Under section 5.7 Key Personnel, Contractors and Suppliers: If the Owner has objection to personnel, Contractors, or suppliers and require that another personnel, Contractor, or supplier be used, they should pay for the difference in price.

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]

**Sent:** Thursday, November 19, 2015 12:30 PM

**To:** Robbie Ferris

**Subject:** FW: HCS contracts forms

**Importance:** High

Getting down to home stretch I hope:

1. The staff does not believe it has authority to extend beyond the May 1<sup>st</sup> date. It is clear to me that I'm not going to be able to do anything about that in the absence of a board action. However, FFEP has a monthly report directly to the Board, so certainly you will have many opportunities to explain the reasonableness and basis of the proposed durations to the Board and seek the necessary extensions – so much was made of this in the informal statements and press, though, that it may not be in anyone's interest to breach the May 1 date while so much public attention is focused on this. When the SMS site is pinned down, for example, might be a time to address it.
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5. Everyone is relieved there has been no protest.

I think we ought to plan to do this execution meeting on Monday. I would like to get all the terms settled by mid-day tomorrow and then be able to create and circulate the final sets of all 5 projects on Friday afternoon.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
www.childs-halligan.com  
(803) 254-4035

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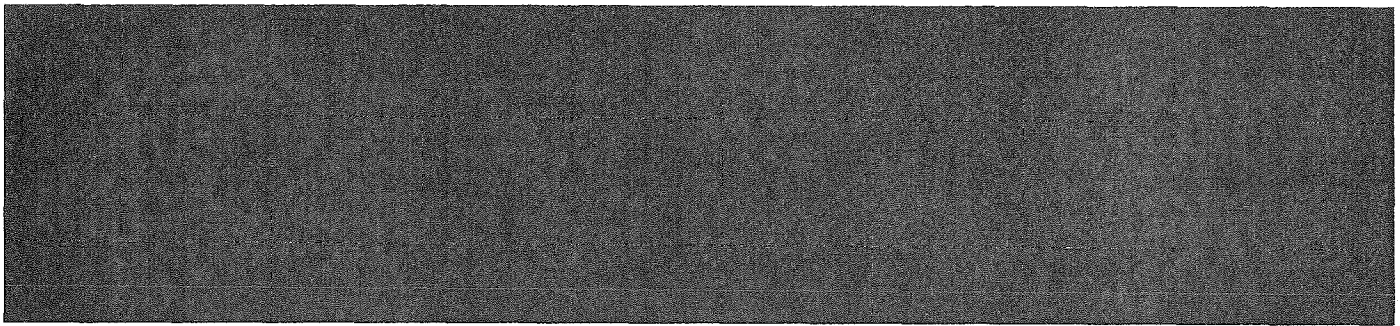
**From:** Mark Wolfe [mailto:MWolfe002@horrycountyschools.net]

**Sent:** Thursday, November 19, 2015 11:35 AM

**To:** Keith R. Powell; John Gardner; Ara Heinz; Rick Maxey; Kenneth Generette; Daryl Brown; William F. Halligan

**Subject:** [REDACTED]

**ATTORNEY-CLIENT  
PRIVILEGE**



Mark A. Wolfe, RLA | Executive Director of Facilities  
Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526  
P: 843/488-6967  
Email: [mwolfe002@horrycountyschools.net](mailto:mwolfe002@horrycountyschools.net)  
Website: [www.horrycountyschools.net](http://www.horrycountyschools.net)



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## Sheri L. Wainscott

---

**From:** Keith R. Powell  
**Sent:** Friday, November 20, 2015 12:17 PM  
**To:** Robbie Ferris  
**Subject:** RE: HCS contracts forms  
**Attachments:** EX B v2 - Working Draft - (1).docx; 673757\_2 141 main - Working Draft - (1).docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Red Category

Robbie – I've got a block of time from now to about 3:30 where I can't work on this. The A141 is attached with changes related to your points below. I am going to have to take this to the Board on Monday night for a motion, and will probably change the signatory from John Gardner to the board chair. Joe is aware of this.

I have put in the more generous time claims provisions that you think will get you the time you need, and I have updated the prototype language and increased the initial invoice per your chart. On SMS we will probably leave in the 5/1 date as with the others, but can put in a clause allowing time for delays in acquiring a site – same principle.

The insurance idea is worth considering but we don't have time to fully vet it, so I have added a note in Exhibit B that the insurance can be changed by agreement at any time.

I still need to fix 2.1.1 and to copy over the HCS's exhibits e and f, but wanted to get this to you before I get distracted for a few hours.

What do you think? I will run you a variance-checked version of everything a little later today when I think we have all settled.

Keith R. Powell  
Childs & Halligan, P.A.  
Columbia, South Carolina  
[www.childs-halligan.com](http://www.childs-halligan.com)  
(803) 254-4035

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**From:** Robbie Ferris [mailto:RFerris@sfla.biz]  
**Sent:** Thursday, November 19, 2015 4:24 PM  
**To:** Keith R. Powell  
**Subject:** RE: HCS contracts forms

Here is where I think we are, call me anytime to discuss if you have questions:

1. On the schedule I have talked with our subs and they can't accelerate the schedule with an increase in cost. I wish this answer were different so I guess we will have to go get the board to address the issue.
2. We consider the following a very big concession. We will grant HCS use of the drawings as you outlined in 12.3 but I prefer to strike "to the extent permitted by law" in the second to last line. My logic is that if they use my



drawings and I am sued at the very least they should guarantee that they will pay my cost of defense and time associated with such defense. Also, in 12.3.1- in the first line change "shall" to "will endeavor to". I don't even know who all of the designers are at this point plus I can't guarantee that they will agree. I will work very hard to get this done.

In addition, in exchange for this right to use the drawings we would ask the following three things be added to the contract.

- a. We be paid for our up front work as previously discussed within 2 weeks of signing the contract.
- b. We be given the right to approve the owners selection of and scope for the commissioning agent. The owner will not hire the commissioning agent without our approval.
3. If the owner is interested we have found that we can buy a \$15,000,000 professional liability insurance policy with an 8 year tail that covers all known designers at the time we bind the policy. That policy will cost us about \$1,300,000.00 but if the owner is willing to limit our liability to the limits of our professional liability insurance we will spend the extra money on that policy. This would be a great benefit because the owner would have significantly more coverage (7 times) more than they would otherwise have. Plus it protects the owner over the 8 years. It costs us more money but I think it would protect us all.
4. Typos:
  - a. 2.1.1- the design builder is repeated
  - b. 9.8.3- review the .....i think you left the word work out?
  - c. Were fine with exhibit e and f that you sent over. We would ask that you consider the following. Under section 5.7 Key Personnel, Contractors and Suppliers: If the Owner has objection to personnel, Contractors, or suppliers and require that another personnel, Contractor, or supplier be used, they should pay for the difference in price.

**From:** Keith R. Powell [mailto:kpowell@childs-halligan.net]

**Sent:** Thursday, November 19, 2015 12:30 PM

**To:** Robbie Ferris

**Subject:** FW: HCS contracts forms

**Importance:** High

Getting down to home stretch I hope:

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**ATTORNEY-CLIENT  
PRIVILEGE**

Mark A. Wolfe, RLA | Executive Director of Facilities

Horry County Schools | Facilities | 1160 E. Highway 501 | Conway, SC 29526

P: 843/488-6967

Email: [mwolfe002@horrycountyschools.net](mailto:mwolfe002@horrycountyschools.net)

Website: [www.horrycountyschools.net](http://www.horrycountyschools.net)



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**AIA Document A141™ - 2014**  
**Exhibit B**

**Insurance and Bonds**

for the following PROJECT:  
(Name and location or address)

New Carolina Forest Middle School  
(per Owner's Request for Proposals No. 1415-91 and Design-Builder's Proposal in response to the solicitation.)

THE OWNER:  
(Name, legal status and address)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina  
335 Four Mile Rd.  
Conway, SC 29528

THE DESIGN-BUILDER:  
(Name, legal status and address)

FIRSTFLOOR ENERGY POSITIVE LLC  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

THE AGREEMENT  
This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the « nineteenth » day of « November » in the year two thousand fifteen (2015).  
(In words, indicate day, month and year.)

**TABLE OF ARTICLES**

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail. During the course of the Project, the Owner and Design-Builder may substitute mutually-acceptable alternative insurance arrangements for those specified in § B.2.1.

**ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement.

§ B.2.1.1 Commercial General Liability with policy limits of not less than «two million» (\$ «2,000,000.» ) for each occurrence and «five million» (\$ «5,000,000.00.» ) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property, and must contain the subcontractor exception to the "your work" exclusion;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than «one million» (\$ «1,000,000.» ) per claim and «one million» (\$ «\$1,000,000.00.» ) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

«\$100,000 per accident.»

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «two million» (\$ «2,000,000.» ) per claim and «two million» (\$ «2,000,000.» ) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, and Automobile Liability. Information

concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

#### § B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
A312 Performance Bond and A312 Payment Bond. The performance bond, may, but is not required to secure the professional liability of design professionals to the extent such liability is covered by the design professional's professional liability insurance.	100% of contract value.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### ARTICLE B.3 OWNER'S INSURANCE

#### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on South Carolina Insurance Reserve Form PD-23. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance in the form of S.C. Insurance Reserve Fund ("IRF") PD-01, PD-09, and PD-12.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any

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applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

DRAFT

## AIA Document A141™ - 2014

### Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the ~~th~~<sup>th</sup> ~~twenty-third~~<sup>th</sup> day of ~~November~~<sup>th</sup> in the year two thousand fifteen (2015).  
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Horry County Schools, South Carolina, a political subdivision of the State of South Carolina,  
335 Four Mile Rd. | PO Box 260005  
Conway, SC 29528  
District Office Phone 843.488.6700

and the Design-Builder:

(Name, legal status, address and other information)

FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225  
Raleigh, NC 27601

for the following Project:

(Name, location and detailed description)

New Carolina Forest Middle School  
(per Owner's Request for Proposals No. 1415-91)

Note: references to Owner's Request for Proposals No. 1415-91 include its addenda.

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
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- 16 SCOPE OF THE AGREEMENT

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- B INSURANCE AND BONDS

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

«Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015.

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User Notes: (1346784345)



§ 1.1.2 The Owner's design requirements for the Project and related documentation:  
(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-9 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.3 The Project's physical characteristics:  
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:  
(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

« Per "Design Requirements" published for Solicitation No. 1415-91 and Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91 selected by the Horry County Board of Education on November 2, 2015. »

§ 1.1.5

« Number not used. »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:  
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« Per "Design Requirements" published for Solicitation No. 1415-91 as amended through the Board of Education's action November 2, 2015. »

§ 1.1.7 The Owner's design and construction milestone dates: Per "Design Requirements" published for Solicitation No. 1415-91

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

.1 Architect

«SFL+A Architects, P.A. 333 Fayetteville Street Suite 225, Raleigh, NC 27601. »

.2 Consultants

«Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

.3 Contractors

« Per Design-Builder's Proposal to Owner pursuant to Solicitation No. 1415-91. »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:  
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« Per "Design Requirements" published for Solicitation No. 1415-91 (Summary of Services Required, Article 3) including all post-occupancy requirements published in the solicitation as amended by addenda »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

Executive Director of Facilities (or a designee identified in writing by the owner.)  
Horry County Schools  
Facilities Department, 1160 E Highway 50  
Conway, SC 29526 »  
«843.488.6965 »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:  
(List name, address and other information.)

«Owner may utilize third party project management which will also receive submittals. »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:  
(List discipline, scope of work, and, if known, identify by name and address.)

«To be determined by Owner. If retained, such consultants will be identified promptly. »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:  
(List name, address and other information.)

Robbie Ferris, S.C. AR.6106  
FIRSTFLOOR ENERGY POSITIVE LLC,  
333 Fayetteville St., Suite 225, Raleigh, NC 27601  
919-573-6350

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

## § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

[ «X» ] Litigation in a court of competent jurisdiction, nonjury before a circuit judge in Horry County, SC.

#### § 1.4 Definitions

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is the entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may have employees that are design professionals or otherwise skilled in construction or construction management, and such employees may, from time to time, perform various tasks or duties for or on behalf of the Owner under this Agreement. However, it is specifically understood that the Owner (including these agents and employees) has no obligation or duty to apply specialty or professional knowledge and skill, and shall not be held to have undertaken to provide or perform any aspect of the Owner's performance of this Agreement as a design professional or specially skilled and knowledgeable construction industry member or construction manager, and this principle applies regardless of the Owner's position titles or office division titles as may be applicable to such employees.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

The Design-Builder may invoice the Design-Builder may invoice the owner for \$1,118,043. for its design work performed prior to the execution of the Design-Build Amendment. This amount is within and part of the price agreed in the Design-Build Amendment.

§ 2.1 number not used

### § 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. The Owner will not pay interest on unpaid sums. This is a specific waiver of requirements of S.C. Code Ann. §§ 29-6-30 and 29-6-50.

### § 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

## ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

### § 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

**Building Permit and Other Permits and Fees:** No general building permit is required in accordance with § 6-9-110 of the South Carolina Code of Laws; however, the Contractor shall be required to provide mechanical, electrical, plumbing and other such permits which may be required for purposes of inspection at no additional cost to the District. Except for permits and fees which are the responsibility of the Contractor in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments, utility impact fees, permits, and such charges required for the successful completion of the work. For each day (not counting Saturdays and Sundays, and not counting the day the Design-Builder submits its completed application to the authority) beyond five (5) days that a jurisdictional authority takes to respond to a permit application or similar permit request that is on the project's critical path, the Design Builder may claim one (1) additional day for the achievement of Substantial Completion.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts, errors, and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When the Owner's Design Requirements or applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Office of School Facilities (OSF) in conjunction with the State Fire Marshal shall determine the enforcement and interpretation of all the applicable codes and referenced standards on state buildings, including the District's school facilities.

#### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. As stated in the Design Requirements, the Design-Builder shall submit written progress reports, photographs of Work in progress, and other data to the Owner electronically, or through the Owner's option, project management software, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as designated by the Owner through its project management software data requirements.

**§ 3.1.8.2** In addition to the requirements of § 3.1.8.1, the Design-Builder shall provide similar information through in-person progress report presentations to the Horry County Board of Education each month during one of the Board's public meetings.

**§ 3.1.9 Design-Builder's Schedules**

**§ 3.1.9.1** The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.9.2** The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ 3.1.10 Certifications.** Design-Builder shall include in each Application for Payment a certification from each of the Architect, Consultants, and Contractors, and furnish to the Owner, these certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner or its designee has approved the respective Submittal.

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.13 Royalties, Patents and Copyrights**

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

**§ 3.1.14 Indemnification**

**§ 3.1.14.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

**§ 3.1.14.2** The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.1.15 Contingent Assignment of Agreements**

**§ 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

#### **ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

##### **§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

[Numbers §4.2 & §4.3 intentionally not used]

##### **§ 4.4 Design-Builder's Construction Proposal**

**§ 4.4.1** The Design-Builder's Construction Proposal shall include the following:

- .1 A list of the documents and other information, including the Design-Builder's original Proposal Development Documents as proposed in the Owner's procurement leading to this Agreement, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Construction Proposal expires.

**§ 4.4.2** Submission of the Design-Builder's Construction Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

**§ 4.4.3** If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

#### **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

##### **§ 5.1 Construction Documents**

**§ 5.1.1** Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

**§ 5.1.2** The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

**§ 5.1.2.1** The Design-Builder shall submit three copies of all Construction Documents prepared and submitted to Regulatory Agencies as a portion of the permitting and approval process for this work.

##### **§ 5.2 Construction**

**§ 5.2.1 Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

**§ 5.2.2** If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

**§ 5.2.3** The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.



§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**Maintenance of Record Drawings:** The Contractor shall maintain at the worksite one (1) record copy of the Contract Documents including approved changes in good order and marked currently to record changes and selections made during performance of the work. A copy of submittals accepted by the District shall also be maintained at the worksite. These items shall be available to the Architect and District when present at the worksite. When required by the Contract Documents, the Contractor shall provide record drawings on all increments of the work such as, by way of illustration and not limitation, plumbing, electrical, mechanical, and all systems, such as fire and security systems, incorporated into the work. The Contractor shall furnish an electronic and paper copy of record drawings of "as-built" detail to the Architect at final completion of all work, excluding punch list items as required by the Contract Documents.

**Professional Certifications:** When professional certification of performance criteria for materials, systems, or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

**Contractor's Quality Control Program:** The Contractor shall institute and maintain throughout the contract term a quality control program, designed to ensure the work performed is in accordance with the Contract Documents, including any changes, at all times and in all respects. The program shall include providing daily supervision and conducting frequent inspections by the Worksite Superintendent(s).

1. **Compliance with Employment Laws:** By entering into a *Contract Agreement*, the Contractor agrees to abide by all applicable laws pertaining to employment including, by way of illustration and not limitation, the following:
- A. Title VII of the Civil Rights Act of 1964, as may be amended.
  - B. Age Discrimination in Employment Act of 1964, as may be amended.
  - C. Title I of the Americans Disabilities Act of 1990, as may be amended.
  - D. Equal Pay Act of 1963, as may be amended.
  - E. Fair Labor Standards Act, as may be amended.
  - F. South Carolina Wages Act, Code 37-10-10 et seq., as may be amended.
  - G. South Carolina Worker's Compensation Act, Code 42-1-10 et seq., as may be amended.

The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin except when such condition is a bona fide occupational qualification reasonably necessary for normal operations of the Contractor. The Contractor, in all solicitations or advertisements for employees, shall state the Contractor is an "Equal Opportunity Employer." The Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and shall include the provision of this paragraph in every subcontract or purchase agreement of more than \$10,000.

**Employment Taxes and Benefits:** Unless under order from the Internal Revenue Service or South Carolina state government, the District does not withhold from the contract payments any Federal or State income taxes, or any employment-related taxes normally withheld on the District's employees. Further, the District shall not provide any employment related insurances or other benefits such as worker's compensation for the benefit of any Contractor, subcontractor or supplier employees.

**Project Key Staff – Project Manager:** The Contractor shall assign a skilled, experienced, and dedicated Project Manager to the project and identified in Exhibit A. The Project Manager shall secure the materials of proper quality and quantity to meet the Contract Documents and manage the appropriate timing of all materials, sub-contracted work, and Contractor provided labor to ensure the continual progress of the work to meet the substantial completion date. The Contractor shall not change the Project Manager or the duties and status of the Project Manager during the course of the project without approval of the District.

**Project Key Staff -- Worksite Superintendent(s):** The Contractor shall employ at least one (1) full-time,

competent Worksite Superintendent and, if required by the Contract Documents, an additional part-time or full-time, competent secondary Worksite Superintendent if expedient for the size and scope of the project. Exhibit A identifies the Worksite Superintendent(s). No less than one (1) Worksite Superintendent shall be in attendance at the worksite at all times during performance of any work by the Contractor's own forces or subcontractors and during delivery of any materials. The Worksite Superintendent shall not perform the work of any trade or other duties; however, the secondary Worksite Superintendent may perform part-time work of a trade or the duties of OSHA Compliance Officer or fireguard, if approved by the District. The Contractor shall not change any Worksite Superintendent or the duties or status of same during the course of the project without approval of the District. The Worksite Superintendent(s) shall enforce strict discipline and good order among the Contractor's representatives, agents, employees, subcontractors and suppliers.

**Worksite Communications:** The Project Manager and Worksite Superintendent(s) are representatives of the Design Builder and communications given to them, either orally or in writing, shall be as binding as if given to the Principal of the Design Builder.

### **§ 5.3 Labor and Materials**

**§ 5.3.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

**§ 5.3.2** When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

**§ 5.3.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### **§ 5.5 Permits, Fees, Notices and Compliance with Laws**

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

**§ 5.5.2** The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder

shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

#### **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder desires to change any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, including but not limited to any contractor or design professional identified by the Design-Builder in its Request for Qualifications response, the Design-Builder shall notify the Owner and provide the name and qualifications of the proposed new personnel, design professional, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed new personnel, design professional, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3.1** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

#### **§ 5.8 Documents and Submittals at the Site**

In addition to any Owner requirements to keep electronic project data up to date, the Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

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#### **§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### **§ 5.10 Cutting and Patching**

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

##### **§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

**§ 5.13.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ 5.13.1.4** Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### **§ 5.14 Mutual Responsibility**

**§ 5.14.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ 5.14.2** If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the

Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner and other contractor(s) for costs the Owner and other contractor(s), respectively, incur because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

#### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;

**[HCS IS PROVIDING ITS CUSTOM ALLOWABLE COST RULES – WILL BE INSERTED A.S.A.P.]**

**Allowable Overhead and Profit Charges:** Additional overhead and profit attributable to the change in contract pricing shall not exceed the following:

- A. For work performed by the Contractor's own forces, a maximum of ten percent (10%) of the allowable direct costs or the unit pricing negotiated at the time of award.
- B. For work performed by a subcontractor's own forces, a maximum of ten percent (10%) of the allowable direct costs.
- C. For work performed by a subcontractor, overhead and profit of a maximum of five percent (5%) is allowable by the Contractor for administration of the sub-contract.

**Retainage:** The District requires a retainage of three and one-half percent (3.5%) of the total contract price, as may be amended by any approved *Change Order*, to be withheld from the Contractor's payments throughout the term of the Agreement and payable at the time of final payment after a) full completion of all work to be performed and all requirements established in the Agreement and acceptance by the District, b) submittal of all closeout documents, and c) submittal of an affidavit of payment of debts/claims, if requested by the District, for every subcontractor who performed work on the project evidencing they have received final payment of undisputed work and retainage withheld. As a condition of the contract, no more than three and one-half percent (3.5%) shall be retained from the progress payments of any subcontractor by the Contractor until final completion of that portion of the work. Prompt payment of retainage to all subcontractors at final completion of their acceptable work regardless of timing during the contract is mandatory. The Contractor shall, at final completion, ensure no amount of the Contractor's retained funds is allocable to the completed and accepted work of any subcontractor nor to materials or equipment purchased from any supplier unless such amounts are in dispute and the Contractor has not requested payment for such disputed amounts to date. Such amounts in dispute shall be identified on the Contractor's affidavit of payment of debts/claims submitted with final documents.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's

compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to give notices of project commencement and take other action to protect the integrity and exclusivity of the project payment bond(s).

### § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing land development, zoning, and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner or its designee shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2; whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.



#### § 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

#### § 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. For Work on the critical path to beneficial occupancy of the Project (or defined component thereof) the ten-day period referenced herein is reduced to five (5) days during the 60 days prior to substantial completion as shown on the last schedule properly submitted under § 3.1.9.

### ARTICLE 8 TIME

#### § 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.1.4 LIQUIDATED DAMAGES FOR LATE SUBSTANTIAL AND FINAL COMPLETION OF THE WORK.

The Owner and the Contractor agree that time is of the essence and that the Owner will suffer significant damage, hardship, and loss if the Work is not substantially completed within the Contract Time. Damages the Owner will incur as a result of breach of contract by failure to achieve substantial completion are: use of relocatable classrooms; use of alternate sites for the educational program; disruption of class locations; disruption of athletic program; disruption of public service activities planned for the project; loss of rental of the project; security risks due to comingling of project workers with additional persons on and near the site; additional safety risks of equipment, vehicles, and unfinished work on the campus during the academic term; general disruption of the teaching and learning process due to project activities during the academic term; moving equipment during the academic term when students and full staff are present; harm to the Owner's reputation and established goodwill among the community, parents, students, and staff due to late delivery of the project; loss of student morale and academic performance due to the ongoing Work during the academic term; harm to the Owner's public relations; disruption and inefficiency of the management of all the Owner's facilities and other current construction projects. The measurement of such damages is difficult. Accordingly, such damages are converted to Liquidated Damages as follows: for each day the Work is not Substantially Complete beyond the Contract Time allowed for Substantial Completion, liquidated damages of \$1000 will be due from the Design-Builder to the Owner; for each day the Work is not Finally Complete beyond the Contract Time allowed for Final Completion, liquidated damages of \$500 will be due from the Design-Builder to the Owner.

#### § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or

by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 **Weather Delays:** When adverse weather conditions are the basis for a request for additional time, such request shall be documented by data substantiating the weather conditions a) were abnormal for a period of time which could not have been reasonably anticipated; b) had an adverse effect on the work scheduled, and alternate work unaffected by the weather could not have been done; and c) had an adverse effect on the construction schedule such that the loss of work time will adversely impact the established completion date. The Contractor must make every effort to mitigate the potential effect of the weather on the construction schedule including, but not limited to, rescheduling of subcontractors, pumping water from work areas, rescheduling work hours to alternate work days within the work week, or other such actions. Such time extension request shall be in writing and submitted to the District for approval within ten (10) days from the end of the event causing the impact on the construction schedule. An extension of time not requested within the appropriate time period shall not be considered. The approved extension of time shall be incorporated in the next *Change Order*.

§ 8.2.4 **Anticipated Weather Delays:** A total of ~~five~~ two (2) days per calendar month (non-cumulative) shall be anticipated by the Contractor as "adverse weather," and such time shall not be considered justification for an extension of time. Such anticipated adverse weather days are established only for normally scheduled work days, excluding Saturdays, Sundays and major holidays, unless such adverse weather conditions on those days are severe enough to impact the scheduled work on the following work day. If adverse weather days beyond the ~~five~~ two (2) days anticipated are substantiated and the Contractor could not mitigate the impact of the additional adverse weather days, an extension of time may be allowed only to the extent of the **actual** impact on the last approved construction schedule and only to the extent of one (1) full day of extended time for each full working day of adverse weather conditions which prevented a forty-hour work week within a seven (7) day calendar week. A request for adverse weather extension shall not be allowed after the date established for substantial completion.

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## ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

### § 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

### § 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least TWENTY ONE days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If

approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.4 Certificates for Payment**

SEE § A.1.5.1.3 FOR SCHEDULE. In accordance with the schedule set forth in § A.1.5.1.3, the Owner issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

**§ 9.6.2** The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually

retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

#### § 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall submit to the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall review the Work. If the Owner's review discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another review of the Work by the Owner.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will obtain for the Owner an occupancy permit issued by the South Carolina Office of School Facilities and a Certificate of Substantial

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Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly review the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application

by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;
- .4 post-occupancy services to be provided by or through the Design-Builder.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as

required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

#### **§ 11.1 Uncovering of Work**

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### **§ 11.2 Correction of Work**

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work either rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or nonconforming Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### **§ 11.2.2 After Substantial Completion**

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.12, if, within the three-year duration of the Design-Builder's post-occupancy obligations, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During this period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

**§ 11.2.2.2** This year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 11.2.2.3** This period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the two-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish



the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Acceptance of Nonconforming Work may only be evidenced by written agreement specifying the nonconformity and the Owner's informed consent to accept it. Nonconforming Work shall not become accepted Work by inaction or implication.

### ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, ~~and as a prototypical basis for future Owner designs.~~ The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project, ~~or as a prototypical basis for future Owner designs.~~

12.3.1 PROTOTYPE. The Owner shall have the right to use the Instruments of Service as a "prototype" design under South Carolina Board of Architectural Examiners regulations and policies. Any architect receiving the original plans from the Owner must first acknowledge and accept full responsibility for the adequacy of the design for its new project, as well as absolve the original Architect of any responsibility of any kind as relates to the original design. Should the Owner reuse provide the Documents and/or Specifications to the Architect(s) for other Projects, then the original Architect, if not retained for the other Project(s), shall be relieved of any liabilities arising out of the other Project(s) and to the extent permitted by law the Owner will indemnify and hold harmless the original Architect from any Claims arising out of such other Project(s).

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§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason to obtain a limited, irrevocable and non-exclusive license for purposes of constructing, using, maintaining, altering and adding to the Project, subject to South Carolina regulations and policies concerning successor design professionals, ~~and as a prototypical basis for future Owner designs.~~

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### § 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

#### § 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on that executed Work, and costs incurred by reason of such termination.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

**§ 13.2.2 Termination by the Owner For Cause**

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract and are expressly included in the performance of the Work covered by the Design-Builder's performance bond.

**§ 13.2.3 Suspension by the Owner for Convenience**

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 13.2.4 Termination by the Owner for Convenience**

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

#### ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

##### § 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by law.

##### § 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

##### § 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

##### § 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work and otherwise available under this Agreement.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### **§ 14.2 Initial Decision**

**§ 14.2.1** An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

#### **§ 14.2.2 Procedure**

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 14.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

**§ 14.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 14.2.7** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### **§ 14.3 Mediation**

**§ 14.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 14.3.2** The parties shall endeavor to resolve their Claims by mediation. The mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§ 14.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice may also be established by acknowledgements and responses exchanged via electronic communications such as electronic mail or any internal messaging functionality of BIM and/or project management software used by the parties for the project.

### § 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to

the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

#### § 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### § 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

#### Conduct of the Design-Builder's Principals, Employees, Agents and Representatives

The safety and security of District staff, students and the general public are of utmost priority to the District. To that end, the Design Builder shall be responsible for ensuring compliance by the Design Builder and any employees, agents or representatives, or subcontractors of the Design-Builder, including all Design Consultants, to the following:

- A. No drugs, alcohol, knives, firearms or other weapons on District property, whether or not there is an existing occupied building.
- B. No fraternizing with, threats to, or use of abusive or profane language in the presence of students, parents, visitors, or District representatives, agents, or employees.
- C. No improper attire, actions or gestures while on any District property.

No smoking on District property in conformance to Horry County Board of Education policy. Violations of such policy shall result in a civil penalty of up to \$1,000 per occurrence to the individual responsible and/or

- the Architect for whom the individual is a Principal, employee, agent, or representative.
- D. Secure **SLED (State Law Enforcement Division) criminal background checks** on all the Design-Builder's Principals, employees, agents, and representatives, and subcontractors, performing work on District property and contractually require the same of all Design Consultants, their employees, agents, and representatives. No employees, agents or representatives, or subcontractors, of the Design Builder having committed violent crimes, crimes against children, or crimes of moral turpitude are allowed access to the District's premises. Such SLED criminal background checks shall be maintained on file in the offices of the Design Builder and made available to appropriate District personnel or the District's legal counsel immediately upon request.

#### **Promotional Materials**

The Design Builder shall have the right to include photographic or artistic representations of the design of the Project among the Design Builder's promotional and professional materials. The Design Builder shall be given reasonable access to the completed Project to make such representations. The District shall provide professional credit for the Architect and Design Builder in the District's promotional materials for the Project. The Architect shall not make any representations in promotional and professional materials other than the identification of the District without the District's approval of the written copy prior to submission, printing and distribution. This condition shall survive termination or completion of this Agreement.

#### **Drug-Free Workplace**

The Architect and the Architect's Design Consultants shall be responsible for initiating, maintaining and supervising all drug-free programs in connection with the performance of this Agreement. The drug-free programs shall conform to Title 44, Chapter 107, § 44-107-10 through § 44-107-90 of the South Carolina Code of Laws as may be amended.

#### **Right to Audit Project**

The District shall have the right to audit the books and records of the Architect to the extent that the books and records relate to the performance of this Agreement and shall include all pricing and Change Order data. Such books and records related to the work covered under this Agreement shall be maintained by the Architect for a period of not less than three (3) years from the date of final payment to the Architect under this Agreement. This requirement shall also apply to any Design Consultants performing services under the Architect's direction.

The Office of General Services of the State of South Carolina, or any auditor under contract with the District has the right to audit the Architect's records related to any Project incorporated under this Agreement during the time frame stated in the previous paragraph. The Architect shall ensure that all records pertaining to any Project are available for inspection at the location specified by the District within seventy-two (72) hours of notification at no additional cost to the District. This requirement shall survive termination or completion of the Agreement.

**Traffic Control On-Site and Off-Site:** The Design-Builder shall conduct its operations in a manner to not interrupt pedestrian or vehicle traffic except as approved by the District and the South Carolina Department of Transportation. The worksite shall be confined to the smallest area possible allowing maximum use of streets, sidewalks, parking areas or other pedestrian areas and reduce to a minimum any hazard to traffic or pedestrians. The Design-Builder shall use worker and traffic control signs and devices necessary to comply with Section VI of U.S. Department of Labor, Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways (Washington, DC: GPO) as may be amended, to facilitate traffic control on public roads, streets, or highways when work performed obstructs public traffic. When such traffic areas are obstructed to any extent by work in progress, workers equipped with flags shall direct vehicle and pedestrian traffic. The workers so designated shall not be assigned any other duties while engaged in directing traffic.

**Safety Designee:** The Design-Builder shall designate a competent individual at the worksite whose duty shall be the prevention of accidents and the implementation and monitoring of all OSHA construction safety standards and requirements. The competent individual shall serve as spotter where there is exposure of pedestrians, students, parents, or visitors to falling debris and, in addition, shall ensure on a daily basis that all fencing or other safety barriers are in an upright position to prevent ingress and egress to "lay down" areas or work areas by unauthorized



individuals.

**Licenses and Permits:** During the term of the contract, the Contractor shall be responsible for obtaining and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and/or inspections required by state, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.

**Iran Divestment Act:** The Iran Divestment Act List is a list published by the [State] Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-irandivestment.phtml>. Consistent with Section 11-57-310(B), the Contractor shall not contract with any person to perform a part of the Work, if, at the time you enter into a subcontract, that person is on the then-current version of the Iran Divestment Act List.

**Immigrant Workers:** The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work. Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

**SC IMMIGRATION LAW.** S.C. Code § 8-14-40 Compliance: Design-Builder certifies that the Design-Builder will comply with the requirements of S.C. Code § 8-14-10 *et seq.* and agrees to provide to the Owner any documentation required to establish either: (a) the applicability of that chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this that chapter by the contractor and any subcontractor or sub-subcontractor.

Business license, insurance, and bonds must be obtained prior to issuance of a Notice to Proceed. Failure to obtain these within thirty (30) days of execution of the agreement makes this Agreement voidable at the option of the Owner.

#### ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Owner's Request for Proposals No. 1415-91 (with addenda) and Design-Builder's Proposal to the same as accepted by the Horry County Board of Education.
- .5 Post-Occupancy Requirements stated in Owner's Request for Proposals No. 1415-91.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER (Signature)**

John K. Gardner, Chief Financial Officer  
(Printed name and title)

\_\_\_\_\_  
**DESIGN-BUILDER (Signature)**

«Robert Ferris, Authorized Member  
(Printed name and title)